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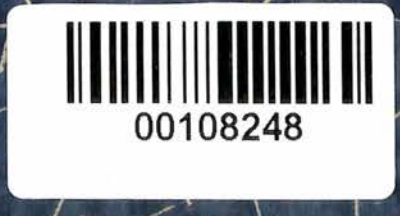

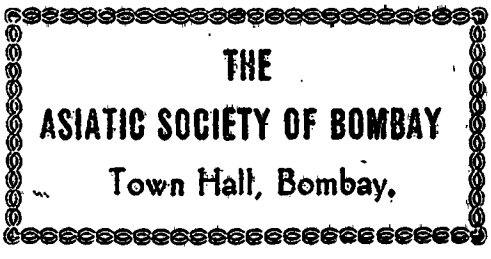


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# SELECTIONS

FROM THE

# RECORDS

OF

# THE GOVERNMENT OF INDIA,

## HOME DEPARTMENT.

No. LXX.

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# PAPERS

RELATING TO THE

QUESTION OF FORMING A SEPARATE JUDICIAL BRANCH OF THE CIVIL SERVICE IN INDIA,

AND THE

# LEGAL TRAINING OF CIVIL SERVANTS.

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# LEGAL TRAINING OF CIVIL SERVANTS.

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# PAPERS

RELATING TO THE

## QUESTION OF FORMING A SEPARATE JUDICIAL BRANCH OF THE CIVIL SERVICE IN INDIA,

AND THE

# LEGAL TRAINING OF CIVIL SERVANTS.

*Note by the* HON'BLE H. SHAKESPEAR,—*dated* 18*th April* 1836.

Being desirous of bringing under the consideration of the Council the subject of the best mode of training and employing the junior Civil Servants in the Revenue and Judicial Departments under the three Presidencies, I beg to suggest that the several Governments be requested to report the rules under which the junior Servants are now employed, from the time of their leaving College, or entering on public duties, until promoted to the office of Joint Magistrate, or Deputy Collector, and that they will be pleased to furnish copies or abstracts of any papers or proceedings which may have been recorded on this subject during the last five or six years.

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*From* W. H. MACNAGHTEN, ESQ., *Secretary to the Government of India, Judicial Department, to the Secretary to the Government of Bengal,—No.* 41, *and to the Chief Secretaries to the Governments of Fort St. George and Bombay,—Nos.* 29 *and* 30, *dated* 18*th April* 1836.

To Madras and Bombay.

I am directed to request that you will submit to the Right Hon'ble the *Governor of Bengal** the wish of the Supreme Government to be favored with a report of the rules under which the junior Civil Servants are now employed from the time of their leaving College or entering on public duties, until promoted to the office of Joint Magistrate or *Deputy Collector*,† and that you will, with the permission of *His Lordship*,‡ furnish to me copies or abstracts of any discussions or proceedings which have been recorded on the subject, during the last five or six years.

* *Governor in Council.*
† *Sub-Collector.*
‡ *The Governor in Council.*

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*From* R. D. MANGLES, ESQ., *Secretary to the Government of Bengal, to the Secretary to the Government of India, Judicial Department,—No.* 789, *dated* 3*rd May* 1836.

I am directed to acknowledge the receipt of your letter dated the 18th ultimo, and to inform you in reply, that the Right Hon'ble the Governor of Bengal is not aware of the existence of any "rules under which the junior Civil Servants are now employed from the time of

their leaving College, or entering upon public duties, until promoted to the office of Joint Magistrate or Deputy Collector." The young officers who enter those branches of the public service, which are subordinate to this Department of the Government, are invariably appointed Assistants to one or other of the Commissioners of Revenue and Circuit for employment, according to the discretion of these functionaries, in the districts composing their respective Divisions.

2. No "discussions or proceedings" of the nature to which you refer "have been recorded on the subject" above alluded to, in this Department, during the last five or six years. But at page 733 *et sequitur* of the Volume 1 "Public," entitled "Minutes of Evidence taken before the Select Committee on the affairs of the East India Company," &c., &c., ordered by the House of Commons to be printed on the 16th August 1832, will be found a discussion on the topics to which your letter relates, extending to a considerable length.

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*Minute by the* HON'BLE H. SHAKESPEAR,—*dated* 19*th May* 1836.

I regret to find from the answer* from the Secretary to the Bengal Government, in the Judicial Department, that no rules have been laid down for the employment of the junior Civil Servants on their first entering upon the public service. They are appointed Assistants to the Commissioners of Revenue and Circuit, to be employed at the discretion of those officers in any of the districts composing their respective Divisions.

* 3rd May 1836.

2. Is it possible that no better means can be devised for training men to the judicial administration of the country than this?

3. Is it possible that, under this course of tuition, they can acquire any knowledge whatever even of the forms of judicial proceeding, still less any acquaintance with the general principles of Hindoo and Mahomedan law, and the regulations under which they must, at no distant period, be called upon to administer justice to the people?

4. Defective as the system unquestionably was under which young men, almost immediately on their quitting College, were entrusted with the decision of civil suits, though small in amount, the present system under which the Judge will take his seat on the Bench, utterly ignorant of the forms of pleading, of the rules of appeal, and of the constitution and powers of the courts below which he is expected to control, is a hundred times worse.

5. In the early stage of our administration an Assistant was directed to assist the Register in procuring all acts of the court to be executed, and in translating and transcribing papers, and in arranging and keeping the records of the court.

6. When promoted to the office of Register, he was empowered to try and decide suits to the amount of Rs. 200, which amount of jurisdiction was afterwards increased to Rs. 500. If of sufficient experience and tried ability, he might have been promoted to the office of Assistant Judge, or subsequently, when that office was abolished in 1814,

he might have been specially empowered to decide suits equal in amount to those tried by the Judge himself.

7. If from this grade he was appointed to the office of Revenue Collector, he obtained thereby an insight into the details of Revenue management, of great assistance to him in adjudicating upon the relative tenures of the landed proprietors and their tenantry, but he never could forget the instruction he had got during his judicial training, and he returned to that branch of the service (as was generally the case) better qualified than before for the high office of a Judge.

8. But how is it now? Literally, in respect to the administration of civil justice, which I am particularly adverting to, he has no opportunity, as far as I can see, of acquiring the slightest information.

9. After the animated discussion that took place amongst the very intelligent Committee got together at Simla in 1831, it might have been expected that some employment would have been chalked out and substituted to supply the judicial instruction, the supposed want of which (I am free to admit the actual want of which), in the first stages of their initiation into the mysteries of jurisprudence, had brought about the removal of the Registers and the abolition of their office.

10. Nothing of the kind was done. The Governor General, in his minute of the 10th of November 1831, seems to have come to the conclusion, that the whole was a matter of obedience and subordination to superior authority. In recommending the system of Sir Thomas Munro "of uniting the appointment of Collector and Magistrate, of "destroying the independence of each other of every officer employed "in the same district, of making the Collector's a great office, consisting "of Deputy Collectors and Joint Magistrates subordinate to one head, "and acting upon the same system," Lord William Bentinck entirely overlooked the fact that, however well that system might work as to the administration of the revenue and the police, it made no provision whatever for the employment of young men in the judicial branch; they were in fact immediately removed from it, and from that time to this they have been excluded from all means (excepting what their own desire of information may prompt them to seek) of obtaining even a practical knowledge, much less a sound knowledge, of judicial business.

11. Lord William Bentinck had certainly not formed a very elevated notion of what the acquirements of an Indian Judge ought to be. At the conclusion of the paragraph (28) of his minute, from which the above is an extract, he adds—"It is in a school of this kind that "young men will be best trained, a profound knowledge of jurispru- "dence or the high attainments that distinguish English lawyers and "judges are not to be looked for, nor, however desirable, are they indis- "pensable; but what is necessary is, that those both young and old, who "have the decision of suits, whether for Rs. 10 or Rs. 1,000, and who are "vested with the powers of fine, imprisonment, and corporal punish- "ment, should have served their apprenticeship, should be conversant with "the manners and business of the country, and that their opinions should "be formed upon the practice and greater experience of their superiors in "office. This plan is in the course of introduction, &c."

12. And it has been going on ever since; yet I can hardly bring myself to believe that, when Lord William introduced it, he was fully aware that by abolishing the office of Register, and placing the Assistants under Revenue and Police Officers, he was debarring them from all opportunity of acquiring that knowledge which is essential to their sustaining the character of a judge with honor and propriety. *I must repeat the fact that for the last four years there have been no means afforded to him by which a young man in the Civil Service can officially learn anything of the forms of judicial procedure, or of the civil laws and regulations, until he takes his seat on the Bench to sit as a Judge of appeal upon the decisions of the Native Judges,* who, from their greater experience, would be more likely to be better acquainted with the question at issue than himself.

13. I ask if this is a position in which the Government ought to place its Judicial Officers. Is the Government not bound by every principle of justice to the people, and regard for the character of its institutions, to leave no stone unturned to correct such a state of things as this, and to avert the reproach that must inevitably follow a persistence in it?

14. Premising, therefore, that I have no wish to see the office of Register restored, which, in fact, became incompatible with the extensive powers with which it was necessary to invest the native Judges, the question I wish to have considered is—By what means can Civil Servants be best educated to fill the office of civil Judge? And it is difficult to conceive a question of more vital importance to the good government of the country, and to the character of the British rule.

15. I have already shown how little this feature in "the best mode of employing the junior Civil Servants" received attention from Lord William Bentinck; it may be truly said not to have engaged it at all, and it may, therefore, almost be considered a question still pending to be decided after mature deliberation on the information then obtained, or which may be obtainable now.

16. In pursuance of this view, I shall make no apology for referring to the reports of the Committee, dated the 24th of May and 22nd of June 1831, and I would particularly attract the attention of the Council to the following extracts from the latter, which entirely convey my own sentiments on the particular point under review, in language which I should not improve by attempting to alter:—

*Para.* 3.—"In all countries considerable time is occupied in learning "the principles of any liberal profession before an attempt is made at "reducing them to practice, and this long after the ordinary period of "education has passed. We see no reason why the office of Judge in this "country, more arduous perhaps than in any other, should alone be "exempted from preliminary probation. The liberality of the pay granted during the probatory interval cannot alter the nature of the case. "We should have thought that the preparation of cases, the collating "or abstracting of papers, the taking of evidence, and reporting on "accounts, were appropriate occupations for a young Civil Servant, and "that, if these duties can really be better performed by Writers and "Mohurrirs receiving one-tenth of their pay, the advantages of superior

" education cannot be very conspicuous; neither do we think that it " by any means follows that the superior cannot derive relief from the " employment of his subordinate without a transfer of responsibility."

*Para.* 5.—" We fully admit that the Judge who has to pass a " decision cannot be relieved from the duty of research and investigation ; " but it is by no means evident to us that he might not derive most " important aid from the employment of a junior Civil Servant in the " conduct of ministerial duties. It does not follow that because this " duty has been hitherto performed by the Omlah, that it has been pro- " perly, impartially, and satisfactorily performed. Everything is now " done by ill-paid and irresponsible individuals, save only the actual " decision or determination. We need not say how much the value of " such decision or determination must depend on the fidelity of the preli- " minary proceedings."

*Para.* 6.—" We are of opinion that there is a great variety of duties " in the Judicial Department, in which the junior Civil Servants can be " employed, independently of the decision of civil and criminal cases. We "conceive that there are many ministerial duties, to aid in the perform- " ance of which their services would be most beneficial. The preparation " of a case for decision is of itself a duty which would afford ample occu- " pation to any junior Servant attached to a civil court. It is a duty " which, though of especial importance, requires only attention, integ- " rity, and a competent knowledge of the native languages for its " efficient performance. It is a duty, however, which is now of necessity " left entirely to the Omlah, and by the abuse of which there can be no " doubt of their reaping a most abundant harvest to the detriment of " honest claimants and the general perversion of justice."

*Para.* 7.—" We see no objection to the junior Servants being " entrusted with the execution of decrees, or to their being employed in " giving effect generally to all acts of the courts, &c."

17. It is quite incomprehensible to me how Lord William Bentinck, with these opinions before him, from men so well qualified to take just and practical views of the subject as Mr. Packenham and Mr. Macnaghten, could have allowed the judicial part of the employment of the junior Servants to escape his notice.

18. I have a note by me on the subject, which I think must have been recorded in the month of February 1831 in the Sudder Court; and, as it contains the opinions which I still entertain on this important question, I shall beg permission to insert a transcript from it in this place. It shows how exactly my ideas corresponded with those of the gentlemen above mentioned :—

" I would employ the junior Servants, as heretofore, as Assistants to " the Judge, Magistrate, or Collector, as circumstances might require, " dividing them into two classes of senior and junior Assistants,—the " former to be considered such after they shall have served three years " from the time they may have been declared qualified for the public " service.

" In the judicial branch the juniors to be employed in translating " papers, revising statements, and in the performance of such other duties

" of a ministerial nature as the Judge might prescribe, and also in the " trial of petty offences as at present, with the exception that they should " be prohibited from inflicting corporal punishment under any circum- " stances.

"The senior Assistant, in addition to the duties authorized to be " performed by the junior, to be employed in preparing civil cases for the " decision of the Judge, and, when deemed properly qualified, to be vested, " in the trial of criminal cases, with the special powers specified in Regu- " lation III., 1821. He might also be deputed into the interior to make " local enquiries, or, with the sanction of Government, to take charge of " any portion of a district in case of the prevalence of crime or ineffi- " ciency of the police.

"The senior Assistant of the Zillah station, whether in the Judicial " or Revenue Department, to have ex-officio the registry of deeds, and, " in cases of death, indisposition, or other casualty, to take charge tempo- " rarily of the office of Judge, or Magistrate, or Collector, as the vacancy " might be, reporting the circumstance to the Commissioner or Provincial " Court of the Division.

"I think the Judges would derive essential service from their " senior Assistants in the preparation of suits previously to their being " brought forward for final adjudication in the following manner:

"When a suit is filed in the Judge's court, the Judge would refer " it to the Assistant with directions to superintend the issue of process " for the attendance of the defendant, to see that the answer, replication, " and rejoinder were regularly filed, and all other preliminary acts gone " through, and then to return it to the Judge.

"The prescribed pleadings being thus completed, the court, as re- " quired by clause 3, section 10, Regulation XXVI., 1814, would consider " and record the points to be established by the parties and return the " case to the Assistant, whose duty it would be to ascertain that the " exhibits were filed, and the evidence taken without unnecessary delay " in conformity to the Judge's order. The Assistant would then return " the case to the Judge, certifying its being prepared for hearing.

"I feel confident, much time would be gained by this mode of proce- " dure. At present much of the Judge's attention is occupied in passing " orders in interlocutory and miscellaneous matters, immaterial to the real " merits of the issue. Nor would this be the least of the advantages " which would result from this mode of employing the junior Servants. " They would not only become by it intimately acquainted with the forms " of judicial proceedings, but they would learn the principles of evidence " and obtain a knowledge of the laws and regulations before they were " called upon to administer them. Above all, they would learn habits " of regular application and attention to business, which not one in ten " will acquire if left to make their way as barristers in the Mofussil " courts."

19. Since the above note was written, the practicability of employ- ing an Assistant in preparing a case for the trial of the Judge has had a practical illustration in the very great assistance which the Judges of the

Sudder have derived from that course of procedure under the management of Mr. D. C. Smyth.

20. The majority of the Simla Committee are entirely mistaken in their assertion that "the Judge has no trouble with a case until it is brought to an issue to require his order or a judgment, when the papers must be read before him and the parties heard." (p. 30.)

21. There is not a more troublesome and vexatious part of a Judge's duty than the having to call over the file and pass some petty order, for causing the attendance of a party, or for accelerating the filing of a paper, or the appearance of a witness. I speak within bounds when I say that one-third of the Judge's time is occupied in looking after such and similar matters which would be equally well managed by the Assistant, who would be all the time informing himself of the forms of process and the regulations applicable to them.

22. Not to trouble the Board with further remarks at present, the substantive proposition which I would wish to suggest is, *that the Sudder Dewanny Adawlut may be called upon to furnish rules for the employment of Covenanted Assistants in matters connected with the administration of civil justice.* If rules can be framed such as to afford satisfactory grounds for believing that their introduction will be attended with benefit to the suitors, relief to the Judge, and the means of instruction to the juniors, doubtless the Supreme Council will not hesitate to suggest their adoption by the local Government with a recommendation that the employment of Assistants may be extended to the courts of civil justice, and not be restricted, as at present, to the offices of Magistrate and Collector.

23. It does not appear to me necessary to defer submitting these remarks until the receipt of the information called for from the Presidencies of Fort Saint George and Bombay.

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*From* H. CHAMIERS, ESQ., *Chief Secretary to the Government of Fort St. George, to the Secretary to the Government of India, Judicial Department,—No.* 476, *dated* 30*th May* 1836.

I am directed to acknowledge the receipt of your letter of 18th April last, No. 30, and to transmit herewith, for the information of the Right Honorable the Governor General of India in Council, the accompanying copy of a letter addressed to the Board of Superintendence for the College, under date the 13th May 1825, containing the rules established at this Presidency for the employment of the junior Civil Servants on quitting College, and to acquaint you that no discussions on this subject have taken place during the last six years.

2. I am further directed to inform you that, in consequence of a necessity which existed in the year 1826 of rendering as many of the junior Assistant Collectors as possible available for the public service, a slight deviation from the rules now submitted was authorized, by which all Assistant Collectors without exception, who had served one year and upwards in the Provinces in that capacity, were made eligible at the pleasure of Government for general employment, but it was at the time

declared that this latitude was only temporary, and confined to the exigency which then existed.

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*From* D. HILL, ESQ., *Chief Secretary to the Government of Fort St. George, to the Board of Superintendence for the College,—No.* 181, *dated* 13*th May* 1825.

In consequence of instructions from the Honorable the Court of Directors, the following rules have been framed for the Civil Service of this Presidency:—

*First.*—Civil Servants on quitting College shall be sent into the Provinces and employed for at least two years in the Revenue Department as Assistant Collectors.

*Second.*—The time which a Civil Servant, while attached to the College, may, with the sanction of Government, have resided in the Provinces under the superintendence of a Collector for the prosecution of his studies, may, to the extent of one year, be reckoned as part of the prescribed period of two years.

*Third.*—Should any peculiar case occur, in which the application of the foregoing rules would be attended with great and unquestionable injury either to the public or to the individual, such case will be specially provided for.

*Fourth.*—As far as the state of the Service will admit of it, Government will select such persons as shall have acquired a practical knowledge of revenue in the Provinces to be Judges of the Sudder Adawlut and of the Provincial and Zillah courts, Chief Secretary, and Secretary to Government in the Judicial and Revenue Department, Register to the Sudder Adawlut, and Secretary to the Board of Revenue, and will select, to fill vacancies in the Board of Revenue, persons who have served as Collectors in the Provinces.

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*Minute by the* HON'BLE A. ROSS,—*dated* 10*th August* 1836.

Under the system of Revenue administration introduced by Regulation I of 1829, the junior Civil Servants of this Presidency, when they first enter upon the public service, are appointed Assistants to the Commissioners of Revenue, by whom they are placed under Collectors possessing the powers of Magistrates; and under these latter officers they get, or may get, a knowledge both of revenue business and of the administration of criminal justice. But, as Mr. Shakespear truly observes, they have nothing to do in the administration of civil justice, and consequently they cannot acquire that practical knowledge of the business and proceedings of the civil courts which is requisite to qualify them for the office of a civil Judge.

In a note recorded by Mr. Shakespear on the Sudder Dewanny Adawlut in 1831, and to which he has referred as containing the opinion he still entertains, he recommends that junior Covenanted Servants should be appointed Assistants to the Judges of the Zillah and City courts, suggesting that they might be employed in translating papers, revising statements, performing such ministerial duties of the courts as the Judges might commit to them, making local inquiries in

the interior, registering deeds, and in preparing suits for the decision of the Judges.

I was also a Judge of the Sudder Court in 1831, and objected to Covenanted Civil Servants, however young, being employed to do what would afford them little or no useful instruction, and what can be better and more economically done by Uncovenanted Officers. I then thought, and still think, that the knowledge required for the discharge of the functions of a Judge would not be attained by giving any length of time to such employments as the five first of those above specified; and in regard to the last, *viz.*, the preparation of a suit for decision, I would now observe that it is an employment for which a junior Assistant is not fit, and which, if he were fit, it would not be right to commit to him. It involves the tracing out and the examination of all the evidence which a suit affords. It is in fact the trial of a suit, and, to ensure right decision, it is necessary that it should be conducted by the Judge himself who is to decide. It is a very great objection to our present system of civil judicature that it allows the Judges to employ others to perform this important duty for them; and a rule or order which required them to entrust its performance to inexperienced young men just arrived in India would aggravate this objection.

Mr. Shakespear proposes that the "Sudder Dewanny Adawlut may "be called upon to furnish rules for the employment of Covenanted "Assistants in matters connected with the administration of civil "justice."

I would rather propose to send Mr. Shakespear's minute, with all the reports and opinions which have been submitted to Government on the subject of it, to the Law Commissioners, to be considered by them when the constitution of the courts for administering civil justice shall come under their revision. It is not likely that rules framed by the Sudder Adawlut for giving employment to Covenanted Assistants in those courts, as they are now constituted, would be adapted to their constitution and forms of procedure as established after they have undergone revision.

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*From* W. H. MACNAGHTEN, ESQ., *Secretary to the Government of India, Judicial Department, to the Secretary to the Lieutenant-Governor of the N. W. Provinces, Agra,—No.* 92, *dated* 31*st October* 1836.

I am directed by the Right Hon'ble the Governor General of India in Council to acknowledge the receipt of your letter No. 3482, dated the 30th ultimo, submitting abstracts of proceedings for the month of July last.

2. In reply, I am desired to request that His Lordship in Council may be furnished with a copy of a letter, and its enclosures, from the Officiating Register of the Sudder Dewany Adawlut, No. 3 of the abstract of civil proceedings for the month of July last.

3. With reference to the entry No. 14 of the same abstract, I am desired to request the attention of the Hon'ble the Lieutenant-Governor

to the remarks contained in my letter dated the 3rd instant, suggesting doubts as to the legality of dispensing with the services of the Hindoo law officers.

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*From* C. MACSWEEN, ESQ., *Secretary to the Lieutenant-Governor, North-Western Provinces, to the Secretary to the Government of India, Judicial Department,—No.* 3873, *dated* 17*th November* 1836.

I am directed by the Hon'ble the Lieutenant-Governor to acknowledge the receipt of your letter, No. 92, of the 31st ultimo, and to transmit to you, as requested, copies of the letter from the Officiating Register of the Sudder Dewanny Adawlut, dated 10th June last, and of its enclosure, entered as No. 3 of the abstract of the civil proceedings of July last.

2. With reference to the subject noticed in the 3rd para. of your letter, I am desired to refer you to my letter No. 3872 of the 15th instant, in reply to yours of the 3rd October.

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*From* H. B. HARINGTON, ESQ., *Officiating Register, North-Western Provinces, to the Secretary to the Lieutenant-Governor, North-Western Provinces,—No.* 587, *dated* 1*st July* 1836.

In continuation of the Court's annual civil reports for the past year, I am directed to request you will submit, for the consideration of the Hon'ble the Lieutenant-Governor, the accompanying copy of a minute recorded by Mr. Ewer, one of the Judges of the Court, on the subject of the abolition of the office of Register.

S. D. A., N. W. P.
*Present*:
M. H. TURNBULL, Esq.,
W. EWER, „
A. J. COLVIN, „
W. LAMBERT, „
} *Judges.*

The Court concur generally in the sentiments expressed in Mr. Ewer's minute; they apprehend that little doubt can be entertained that the abolition of the office in question, by doing away with the only school in which the junior Servants of the Company had an opportunity of making themselves acquainted with the judicial regulations, and of acquiring an insight into the practical duties and powers of the civil courts before they were called upon to exercise the more extensive and responsible functions of a Zillah or City Judge, possessing, under the system now in force, original and appellate jurisdiction, equal in extent to that which was vested in the late courts of appeal, must tend materially to impair the efficiency of the judicial establishment, while, as remarked by Mr. Ewer on the occurrence of vacancies in that department, they must necessarily be filled up by men who have had little or no judicial experience, and who may then be called upon for the first time to preside in a court whose decisions in a large proportion of the cases that come before it are final, and not open to appeal or revision by this Court or of any other tribunal.

*Minute by* W. EWER, ESQ.,—*dated* 10*th June* 1836.

I would strongly recommend the re-establishment of the office of Register, or something of the same description. At present I know not whence the supply of experienced Judicial Officers of the higher rank is to come from, while at the same time the administration of justice is hourly acquiring more importance, both in the eyes of the Government and of the public.

During the last year we have seen several instances of Judges appearing in that character for the first time without the slightest notion of the duties they were called on to perform in their own courts, and altogether unable to control the proceedings of their inferiors. On one occasion, indeed, the Sudder have had the disagreeable duty of reporting an acting Judge unfit for the office.

At present a Judge cannot be absent on leave without a stop being put to the trial of civil suits in his court. At Mirzapore the Judge was absent for three months, and the court shut, merely because there was nobody to officiate for him. The same has occurred at Mynpoory and at other stations for various periods, and a calculation might easily be made, showing the number of additional suits which would have been disposed of, had there been a Register to take charge instead of an Assistant or Principal Sudder Ameen to conduct the current duties.

A strict control over the proceedings of the inferior courts is more called for since the passing of Act XI., 1836; but where we are to find men capable of exercising it, is another matter. The only remedy is providing education for future Judges, as we do for Collectors, and the sooner it is applied the better.

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*Note by the* HON'BLE H. SHAKESPEAR,—*dated* 13*th December* 1836.

The sentiments expressed by the Allahabad Sudder Judges on this very important subject are so much in accordance with the opinions which I submitted to the Board in a minute dated the 19th of May last, that I beg to suggest the consideration of them in connexion with that minute.

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*Minute by the* HON'BLE H. SHAKESPEAR,—*dated* 19*th October* 1837.

In my minute dated the 19th of May 1836, I was not so fortunate as to impress the Governor General and my colleagues with my own view of the vast importance, to the best interests of the country, of some systematic plan being adopted for training up the junior members of the Service for employment in the administration of civil justice. It is a subject, however, which I feel bound by every consideration of public duty to press on the attention of the Government, and I think this a fit opportunity for doing so at a moment when we are about to be deprived for a length of time of personal communication with the Governor General.

His Lordship will have many opportunities, during his tour, of satisfying himself of the present state of the judicial establishment,

and I am much mistaken, indeed, if His Lordship does not find that, as the present incumbents are disposed of, there are few among these juniors who are competent to sit in judgment on the proceedings and decisions of the experienced Native functionaries whose acts they are expected to control, or at all events that the number so qualified are rapidly diminishing under the present system.

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*From* W. H. MACNAGHTEN, ESQ., *Secretary to the Government of India, Judicial Department, with the Governor General, to the Officiating Secretary to the Government of India,—dated 19th February* 1838.

I am directed to transmit to you, for submission to the Hon'ble the President in Council, the accompanying copy of a minute recorded by the Right Hon'ble the Governor General of India, containing the impressions entertained by His Lordship on the question of the judicial education of Civil Servants.

2. The papers which gave rise to this minute, and specified below, are enclosed herewith in original :—

Letter from the Secretary to the Government of Bengal, dated 3rd May 1836.

Letter from the Chief Secretary to the Government of Fort Saint George, dated 30th May 1836.

Minute by the Hon'ble H. Shakespear, dated 19th May 1836.

Minute by the Hon'ble A. Ross, dated 10th August 1836.

Letter from the Secretary to the Lieutenant-Governor, North-Western Provinces, dated 17th November 1836, with enclosure.

Note by the Hon'ble H. Shakespear, dated 13th December 1836.

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*Minute by the Right Hon'ble the Governor General of India,—dated 17th February* 1838.

The important subject of the best means of providing for our Civil Servants a suitable education for the office of civil Judge has at different periods been discussed with much variety of opinion, and it was specially brought to the notice of the Council by Mr. Shakespear in a minute of the 19th May 1836 (on which observations were offered by Mr. Ross in a minute of August 10th 1836), and in a subsequent note of December 13th 1836, referring to a minute by Mr. Ewer, Judge of the Sudder Court in the Western Provinces, of June 10th, and a letter addressed to the local Government by that Court collectively on July 1st of the same year. I have continued to give my attention to the opinions recorded in these papers, as the opportunities of observation and experience have occurred to me, and I now proceed to state briefly the impressions which I entertain on the question.

Mr. Shakespear refers with general approbation to the letter of the Western Sudder Court who are inclined strongly to the re-establishment of the office of Register, or the adoption of some arrangement of a similar character, and who would think it necessary "to give our

officers a training to make them Judges as we do to make them Collectors." I observe, however, that in his minute* of May 19th, 1836, Mr. Shakespear states that he has no wish to see the office of Register restored, "as it in fact became incompatible with the extensive powers with which it was necessary to invest the Native Judges." Mr. Shakespear at the same time feels strongly that the present system affords no opportunity to our officers of acquiring information in respect to civil justice, to the forms of pleading, the rules of appeal, the constitution and powers of the inferior courts, and, still less, as to the general principles of Hindoo and Mahomedan law and the civil regulations. He refers to opinions recorded by Mr. Packenham and Mr. Macnaghten in 1831, and strongly supports them as to the propriety of employing our junior officers to some extent in different ministerial duties in the courts of the Judges, of which the most important is the preparation of cases for decision in the mode in which so much excellent assistance was rendered to the Sudder Court by Mr. D. C. Smyth. He proposes to call upon the Sudder Courts for a scheme of rules for the employment in this manner of the junior Assistants. Mr. Ross, on the other hand, considers that the preparation of cases for decision, "which involves the tracing out of evidence," is the most important part of a trial, which ought, if possible, to be always performed by the Judge himself; that it is a great defect in our existing practice that such preparation is so greatly made over to subordinate ministerial officers, but that this defect would be in no measure remedied by entrusting the duty to inexperienced junior Civil Servants. He would refer the whole subject for the consideration of the Law Commission.

* Para. 14.

I would first advert to the opinion of the Western Sudder Court which is shared, doubtless, by others, that it is of advantage to bring up our Judges in something of an exclusive and separate course of training.

I should, for myself, accede only with much qualification to the conclusion that for the provision of well qualified Judicial Officers to the Indian Service, a distinct course of education, or a distinct class of men, is either expedient or necessary. I have always been inclined to doubt whether, for any profession, or for any career, the early training of young men in one particular course, and apart from others, is conducive to good: for it forms them into a caste, it limits within that caste general knowledge and general experience, it gives to each individual, however inferior in natural qualification, a claim to advancement within the course for which he has been instructed, and to this degree it limits the powers of those by whom selection for advancement is to be made. I know how fairly open the question is to argument upon both sides, but, for one, I would rather for the Naval, Military, or Indian Service, select candidates who had acquired the standard of qualification from general education, than accept in succession all who might be presented to me on the ground that they had been educated in the Naval or Military Colleges, or at Hayleybury; but if this view be at all tenable in first selections, it may, as it seems to me, be urged with much greater force as applicable to a sub-division and close classification within the services in India. I most strongly doubt whether a judge in India can be

pronounced as qualified for the duties imposed upon him, who has not had considerable experience in revenue matters and in the general business of the country, and who has not been in that contact with the people, and in that familiarity with their prejudices, their habits, their attachments, their merits, and their faults, which a connection with their monied interests, and intimate knowledge of their landed tenures, and the frequent view of their differences apart from the reserve and formality of a court of justice, see m best to promise. As it seems to me, the most accurate knowledge of regulations, and of forms and precedents, and even the long apprenticeship of a court, would but imperfectly supply the want of this experience. On the other hand, it would appear to me that a high Revenue Officer cannot be pronounced to be fit for his duties, who is not also well conversant with much of that knowledge which would seem to be essential to the judicial character, and I should not think with great respect of the zeal and of the abilities of any one who had successively filled appointments in the Magistracy and the Collectorship, and who had not at the same time become much imbued with technical and with legal learning. This acquirement, grafted upon an habitual control of establishments, and an insight into the ways of men, would, perhaps, give a very satisfactory degree of qualification for a judge in this country; and though different men will, in very different degrees, so qualify themselves, and though their dispositions will, with much variety, more or less, incline them to that class of their mixed duties which may bear a judicial or a revenue character, I have no fear but that while the feeling of the Government on the propriety of seeking a knowledge of all classes of duties is thoroughly understood, and an active superintendence exercised over the exertions of the service, officers will be found well able to fill either department.

It is to be remembered on this subject that much information upon judicial principles and procedure is necessarily acquired in the mere ordinary performance of the duties of a Magistrate and Collector. Our Magistrates are in fact criminal Judges, with considerable powers, and a Collector has very frequently to conduct investigations, in their nature wholly judicial. In either class of situations, an officer must become familiar with rules of process and principles of evidence.

A Collector has to conduct in the courts of justice numerous suits on behalf of Government, which must afford him instruction in their pleadings and practice. A Collector, mixing with the people from his youth, must also have an intimate knowledge of agricultural rights and tenures, with which so much of the litigation in our Indian Courts is connected, and he cannot avoid forming at least a general acquaintance with both the Hindoo and Mahomedan laws of inheritance. It is fortunate also that an Indian Judge is not required to master a voluminous and complicated body of statutes and precedents, and that the duty of judicial administration generally is here very simple, so that, without even the more extensive study which may fairly be expected from a number of intelligent and zealous servants, an Indian Magistrate or Collector would ascend the Bench with much of very valuable preparation, and with comparatively little of difficulty to encounter.

While I am upon these grounds disposed to think that the existing practice is not open to all the strong objection which Mr. Shakespear feels to it, I am yet not insensible to the advantage of mixing, if it could be effected, some early and more direct practical acquaintance with the administration of civil justice with the other experience which is acquired by the junior Civil Servants. I am favorable to the employment of any leisure which can be spared from more pressing avocations to the object of acting under the Judges in the preparation of cases in the mode which Mr. Shakespear has suggested, and I should readily concur in a requisition on the Sudder Courts to prepare rules under which such ministerial co-operation could best be afforded. I fear that few of the junior officers will be found at present to possess leisure for the purpose, and I would not withdraw them, by any compulsory direction on the subject, from those duties of revenue enquiry and settlement which are of paramount importance, as being calculated to define the rights and possessions of the community with a certainty and clearness hitherto unknown, and to give invaluable facilities to all administration. But I doubt not that there will be found officers who, from their desire to accomplish themselves in all that may tend to their greater efficiency as public servants, and in pursuance of an expressed wish of the Government, would make additional exertions in order to enable them to devote some portion of their time to this new description of duty. I should not object, therefore, to an instruction to the Judges and junior officers of, and below, the grade of Joint Magistrates and Deputy Collectors, encouraging the one class to seek, and the other to render, assistance in this form, so as not to occasion detriment to the proper functions of any. The same opportunity might be taken of making more generally known the value attached by the Government to a systematic study, although not required in the immediate course of duty, of the laws and regulations which must be referred to in the decision of civil controversies.

That the actual amount of assistance thus afforded to the civil Judges would, according to its degree, be useful to them, I do not doubt. The appointment of Uncovenanted Officers of a superior class to render exactly the same description of assistance is an arrangement which has been strongly recommended to me by intelligent officers of the Judicial Department. The duty would appear to me to be rather a faithful and intelligent superintendence of the collection and record of evidence adduced by parties or their agents, than the searching out of evidence by the Assistant so employed, for which Mr. Ross would consider him not qualified.

It will be quite proper, I would, however, add, whatever be the immediate determination of the Government, that the subject, as connected with the permanent scheme of our Indian judicial establishments, should be referred for the deliberation of the Law Commissioners.

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*Minute by the* Hon'ble W. W. Bird,—*dated 27th July* 1838.

The opinions expressed by the late Mr. Shakespear, and by the Judges of the Sudder Court in the Western Provinces, on the necessity

of providing some means for the judicial education of the junior Civil Servants, are by no means confined to those gentlemen. There are many others who still continue to think that since the abolition of the office of Register to the Zillah and City courts, no school exists in which a practical knowledge can be acquired by the younger Servants of judicial duties, and that some exclusive and professional training is necessary before they can be properly qualified to preside in a court of justice.

I do not concur in these opinions. It is true that in the office of Register, to which it not unfrequently happened that junior Civil Servants just out of College were appointed, without any experience whatever, and almost without the power either of understanding or making themselves understood, some knowledge of forms and of proceedings was gradually acquired, but it was attended with great inconvenience, arising from the youth, ignorance, and inexperience of the junior Servants employed, and the undue influence of the Native Officers of the court on whom they had to depend in the discharge of their judicial functions for guidance and instruction. By dint of deciding, they become at last conversant with decisions; but knowledge so acquired is at the expense of the parties concerned, and to disseminate it by such a process is, (to quote an observation of Mr. Courtney Smith) "as if Surgeons were to be instructed in their art by dissecting living men."

It was, therefore, I think wise to abolish the office of Register, and to postpone calling upon the junior Servants of Government to preside in courts of civil justice until they became, from maturer age and experience, better qualified for the purpose. A knowledge of judicial forms and proceedings is not the only requisites for a Judge: he should possess, likewise, an intimate acquaintance with the habits, manners, feelings, and prejudices of the people,—an acquaintance which is not to be picked up within the walls of a Cutcherry, where a Judicial Officer is compelled to sit from morning till night surrounded by his Omlah, whose interest it is to bind both him and the people as to the real character of each other, and keep them as far apart as possible.

In fact, it is only in the Revenue Department that any real intercourse with the people can be carried on, and it is on that account that at the Madras Presidency, as appears from the letter of the Chief Secretary to the Government of Fort St. George, dated the 30th May 1836, the junior Civil Servants are required on leaving College to enter the Revenue Department as Assistant Collectors under a promise, that, as far as the state of the Service will admit of it, the Government will select such as shall have acquired a practical knowledge of revenue in the Provinces to be Judges of the Zillah and Provincial courts, and of the Sudder Adawlut.

This arrangement, says Sir Thomas Munro, was adopted, "not merely to teach them revenue business, but because it enables them to see the natives in their best form, as industrious and intelligent husbandmen and manufacturers; to become acquainted with their habits, manners, and wants; to lose their prejudices against them; to become attached to, and feel a desire to befriend and protect, them; and because

our Magistrates are, in fact, criminal Judges with considerable powers, and a Collector has very frequently to conduct investigations in their nature wholly judicial. In either class of situations an officer must become familiar with rules of process and principles of evidence." Hence it appears that, while the necessary qualifications for a civil Judge cannot be satisfactorily acquired without going through the office of Collector, the offices of Collector and Magistrate afford an excellent preparation for discharging the functions of civil Judge.

" If, in the Naval and Military Services of England, it would, as stated by His Lordship, be preferable to select candidates who had acquired the standard of qualification from general education, rather than accept in succession all who had been educated in the Naval and Military Colleges; such a principle of selection is still more applicable to the Indian Service. The attempt to confine men to a particular line, and train them in the mode suggested, was once tried and found impracticable. Whenever there is a call for particular qualifications, the individual who possesses them must be selected, let him belong to what line he may. So long as the Civil Service continues an exclusive one, there is no other alternative; and it is a remarkable fact, in illustration of this necessity, that, since the introduction of the Revenue system of 1829, the majority of the members appointed to the Sudder Boards have been Judicial men.

The more general, therefore, the knowledge and experience in different Departments, which a man acquires in his progress through the Service, the greater will be his facilities for executing the duties which he may be required to perform, and the more valuable will be his services to Government. It is, of course, desirable to afford the junior Civil Servants every facility for qualifying themselves in the Judicial as well as in the Revenue Department, and, for this purpose, the plan proposed by Mr. Cameron for the Judicial education of Native candidates for the office of Moonsiff might perhaps be adopted. On being appointed Assistants to the Commissioners of Revenue, to be employed at the discretion of those officers in any of the districts composing their respective Divisions, they may, when not engaged in revenue or other duties of a pressing nature, attend as Assessors at the Cutcherry of the civil Judge, in order to acquire not only a knowledge of forms and proceedings, but likewise a familiarity with the disposal of judicial questions, which, on being eventually required to preside in a court of justice, cannot fail to be of the greatest advantage.

*Resolution by the Government of India, in the Judicial Department,—dated 13th August 1838.*

READ the minutes and correspondence noted on the margin, on the subject of re-establishing the office of Register, and of other propositions for securing an adequate knowledge of law and procedure in junior Civil Servants on this establishment.

Copy of Note by the late Hon'ble H. Shakespear, dated 18th April 1836.
To Secretaries to Governments of Bengal, Fort St. George, and Bombay, dated 18th April 1836.
From Secretary to Government of Bengal, dated 3rd May 1836.
From Chief Secretary to the Government of Fort St. George, dated 30th May 1836, with enclosure.
From Secretary to the Lieutenant-Governor, North-Western Provinces, dated 17th November 1836, with enclosure.
Minute by the late Hon'ble H. Shakespear, dated 19th May 1836.
Minute by the Hon'ble A. Ross, dated 10th August 1836.
Note by the late Hon'ble H. Shakespear, dated 13th December 1836.
Minute by ditto, dated 19th October 1837.
Letter from Secretary to the Government of India, with the Governor General, dated 19th February 1838, with enclosure
Minute by the Hon'ble W. W. Bird, dated 27th July 1838.

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RESOLVED that, with reference to the minute of the Right Hon'ble the Governor General, dated the 19th February 1838, the following letter be written to the Secretary with His Lordship, and that the question be referred to the Law Commission.

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ORDERED, that a copy of the foregoing Resolution, with the papers connected with it, be transferred to the Legislative Department, for the purpose of being communicated to the Indian Law Commission.

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*From* T. H. MADDOCK, ESQ., *Officiating Secretary to the Government of India, Judicial Department, to the Secretary to the Government of India, with the Governor General,—(No.* 168, *dated* 13*th August* 1838.*)*

I am directed by the Hon'ble the President in Council to communicate to you, for the information of the Right Hon'ble the Governor General, that the subject of His Lordship's minute, dated the 19th February 1838, on the question of the judicial education of Civil Servants, which was forwarded by you to Mr. Mangles in your letter of the same date, has met with that attention from the Hon'ble the President in Council, which the high importance of the question therein discussed is calculated to excite.

2. On the first point to be disposed of, namely, the expediency of re-establishing the office of Register, the President in Council is of opinion that no sufficient reasons in support of that measure were adduced in the minute of Mr. Ewer, one of the Judges of the Sudder Court in the Western Provinces, of date June 10th, 1836, while sufficient objections against it are admitted in Mr. Shakespear's minute of the 19th of May in the same year; and the present organization of the Civil Service, taken in connexion with the extensive powers now

exercised by Native Judges, seems to preclude the practicability of restoring the office of Register, were it even desirable to do so.

3. The question, therefore, to be decided is, by what means, since the office of Register, in which young men were early in their career introduced into judicial practice and had opportunities of becoming acquainted with the forms and procedure of courts of law, is not to be re-established, provision may be made for training up a portion at least of the juniors of the Service in such a manner that, although their career is commenced in the discharge of duties pertaining to the Revenue Department, they may not be without opportunities of attaining considerable proficiency in knowledge of the laws and the forms and practice of the courts. For, in the opinion of the President in Council, whatever arguments may be adduced in favor of a system under which a certain number of the gentlemen of the Civil Service should be set apart for the judicial branch of it, and should be confined exclusively to that branch, he concurs entirely in the sentiments expressed by the Governor General, that such exclusiveness would, in India, tend to a greater evil than any advantage which it is likely to produce, because the officer confined to his court and to its forms and proceedings from the beginning of his career, can never have the opportunities, which the Revenue Officer enjoys, of personal intercourse with all classes of the people, nor those inducements to interest himself in their affairs from which the Revenue Officer acquires a considerable knowledge of their characters for good as well as for evil; and, while the most serious obstacle opposed to the success of our efforts for the good government of India consists in ignorance on the part of European functionaries, of the language, habits of thought, feelings, and prejudices of the people entrusted to their rule, any scheme of confining a Civil Officer throughout his career to the court of justice, where he lives apart from the people, can tend only to perpetuate, with respect to one class of functionaries, an evil more or less unavoidable and inherent in the circumstances in which we are placed, and, in the opinion of His Honor in Council, is least of all calculated to convert the individual so situated into a wise and intelligent and beneficent judge.

4. Besides, when it is considered how very large a portion of our subjects belongs to the agricultural class, or is connected by dealings with the people who cultivate the soil and pay the Government revenue, and how much of the entire capital of the country, which must be the subject of litigation in the civil courts, is employed directly and indirectly in agriculture, or in advances of seed, grain, tuccavee, and for paying the Government revenue, and that the Revenue Officer, of all others, has the best opportunities of becoming intimately acquainted with the nature of these and all other transactions of the various parties concerned in the multifarious operations of agriculture and revenue receipts and disbursements, it would seem that a familiarity with the Revenue system is indispensable to fit a man for the efficient discharge of the greater portion of his duties as a Judge. Nor is it to be overlooked that the Revenue Officer, even in the discharge of his

proper duties, cannot fail to become apt in the adjudication of disputes of precisely the same nature as those which come by a different process under the cognizance of the courts. He has to investigate and to decide upon questions of partition, of disputed boundaries, of contracts, and of accounts; he has to take and weigh evidence to decide upon the validity of documents, and to interpret, as well as to obey, a considerable portion of the regulations of the Bengal Code. With the opportunities which such duties afford him of exercising and improving his talents, and acquiring with much experience habits of regularity and application to business, and a fitting confidence in his own judgment, it would be hard to imagine that when length of service and the exigencies of the State call him from his duties in the Revenue Department to the discharge of functions purely judicial, he should be found altogether wanting in sufficient qualifications to undertake them. He may be ignorant of the forms of procedure of the court in which he is appointed to preside, and he may be too little acquainted with those regulations which apply exclusively to the administration of law; but these desiderata are not attainments so difficult to be acquired that a man trained in habits of regularity and application would permit himself to labor long under a deficiency in such kinds of knowledge.

5. Under a system, also, which admits of the employment of Civil Officers successively in different Departments, the Government, with the knowledge which it possesses of the characters and qualifications of the members of the Civil Service, is enabled to select, for the highest employments in each branch of the administration, those individuals out of the whole body of the Service, who appear best adapted for the performance of the duties which they are appointed to discharge,—an advantage which would be, in a great measure, lost by any separation of the members of the Service into distinct classes.

6. Entertaining these sentiments, the Hon'ble the President in Council entirely concurs in the opinion with the Governor General, as expressed in His Lordship's minute, that, in India, the exclusive employment of any portion of the Civil Service in judicial proceedings would be calculated to limit their opportunities of acquiring general knowledge of men and things, and in so far tend to contract their minds; whereas experience of the duties which each individual must, in his capacity of Magistrate and then of Collector, have for many years been trained to perform, will, out of a numerous body of zealous and intelligent servants, produce many who may ascend the Bench as Judges "with much of very valuable preparation and comparatively little difficulty to encounter."

7. The President in Council is, however, averse to the exercise by the same officer, at the same time, of the duties of Magistrate and Collector, and would think it far preferable that such a system of gradation and promotion should be introduced as would enable Government to employ Civil Officers on their preferment from subordinate situations, first in the capacity of Magistrates, from which

grade they might afterwards rise to be Collectors, and, after serving in that capacity for a sufficient period of time, might be eligible to be promoted to the situation of Judge.

8. His Honor doubts the practicability of the plan of employing young men under the rank of Deputy Collectors and Joint Magistrates in judicial duties under the Zillah and City Judges, which is recommended by the Right Hon'ble the Governor General. He has directed that it shall be submitted to the Indian Law Commission to be taken into consideration in connexion with the Code of Procedure, in the arrangement of which the Commissioners are at present engaged.

9. The President in Council has not, however, judged it expedient, at the present moment, to call upon the Sudder Court to draw out rules, as suggested by the Governor General, under which the attendance of young Civilians in the Zillah courts, and their subordinate co-operation in judicial proceedings, might best be regulated, as the present rules of procedure, according to which the court could alone draw out any subsidiary rules with regard to the occasional employment of young Civilians in judicial proceedings, are likely to be considerably modified and altered; and it would seem better that these subsidiary rules should be formed with reference to the new law of procedure, and that it will be sufficient that the subject should at once be referred to the consideration of the Law Commission; and the question has accordingly been referred to that body.

10. The papers connected with this subject have been sent to the Law Commission; with a letter, a copy of which, with the papers already considered by the Governor General, and a minute since recorded by Mr. W. W. Bird on the subject, is herewith enclosed.

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*From* T. H. MADDOCK, ESQ., *Officiating Secretary to the Government of India, Legislative Department, to the Secretary to the Indian Law Commission,—(No. 282, dated 13th August 1838.)*

I am directed to forward to you copies of the papers noted in the margin, and to request the attention of the Law Commissioners to the subject to which they relate, in connection with the system of judicial procedure, in the arrangement of which the Commissioners are at present engaged.

Copy of note by the late Hon'ble H. Shakespear, dated 18th April 1836.
To Secretaries to Governments of Bengal, Fort St. George, and Bombay, dated 18th April 1836.
From Secretary to Government of Bengal, dated 3rd May 1836.
From Chief Secretary to the Government of Fort St. George, dated 30th May 1836, with enclosure.
From Secretary to the Lieutenant-Governor, North-Western Provinces, dated 17th November 1836, with enclosure.
Minute by the late Hon'ble H. Shakespear, dated 19th May 1836.
Minute by the Hon'ble A. Ross, dated 10th August 1836.
Note by the late Hon'ble H. Shakespear, dated 13th December 1836.
Minute by ditto, dated 19th October 1837.
Letter from Secretary to the Government of India, with the Governor General, dated 19th February 1838, with enclosure.
Minute by the Hon'ble W. W. Bird, dated 27th July 1838.

*From* J. P. WILLOUGHBY, ESQ., *Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India, Judicial Department,—(No. 1572, dated 28th July 1838.)*

I am directed to transmit, for the purpose of being laid before the Hon'ble the President in Council, the accompanying extracts, para. 17 of a letter from the Assistant Register of the Sudder Dewanny and Sudder Fouzdaree Adawlut, dated the 12th of September last, and paras. 24 to 31 of a circuit report of the Judicial Commissioner for the Southern Mahratta Country, on the completion of his tour.

2. The Hon'ble the Governor in Council is aware that the subject of training the young Civil Servants for the judicial office, referred to in the 17th para. of the Assistant Register's letter, and in the 24th to the 31st of the report, has excited much anxious consideration, and that much discussion has occurred regarding it in the Indian Law Commission. It will no doubt receive the full deliberation of that body, when it arrives at the point, in framing the Code of Civil Procedure.

3. As, therefore, anything that could be done by this Government in respect to the Bombay Presidency would be partial, I am desired to refer the matter for the consideration of the Supreme Government, leaving it to His Honor in Council to hand over the papers to the Indian Law Commissioners, or to take such other course in respect to them as may be deemed fit.

4. The Governor in Council, however, is of opinion that it would be unwise to break in upon a system which has been so recently established, as that of making over the decision of all original suits, with certain exceptions, to the Native judicial functionaries, and because it is a very great question if it would be just to train junior Servants to the judicial office by giving the decision of questions of right and property to inexperienced hands.

5. In respect to Assistant Judges trying appeals, the Governor in Council thinks that this should only be allowed where the state of the business of a particular court requires it, and never when the Assistant is not amply qualified for the duty, nor for the purpose of providing a school of instruction for Assistants.

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*Extract of a letter from the Assistant Register of the Sudder Dewanny and Sudder Fouzdaree Adawlut, Bombay,—dated 12th September 1837.*

"17. The defect under the existing system in the means of obtaining a judicial education for the junior members of the administration by that excellent school,—the trying of original suits adverted to in the 24th *ad* 31st paras.,—has, I am directed to observe, more than once incidentally presented itself to the attention of the Judges. The subject involves topics of the highest importance in the Judicial system, and, amongst these, there appears to the Judges a difficulty somewhat hard to be reconciled, which arises from the distinction of authority in the European and Native branches. If to the former are to be confined the high grades in judicature of appellate jurisdiction, it will, the Judges conceive, be obvious that correspondent

qualifications must be possessed by these functionaries; and, amongst these, the Court would assign at nearly the top of the list a practical knowledge of the characters, habits, and customs of the people, the attainment of which, however, appears to the Judges to be hopeless, excepting by some such means as the schooling above adverted to. Upon the return of the absent Judges, and when a full Court can thereby be assembled, the subject will be brought on for consideration with the able and judicious remarks Mr. Greenhill has offered, and the Court will thereafter submit its sentiments to Government."

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*Extract of a Circuit Report from the Judicial Commissioner for the Southern Mahratta Country,—dated 1st August 1837.*

"24. This office is requisite in many respects, but, owing to the present laws, is not nearly so useful as it ought to be. By the Code, as promulgated by Mr. Elphinstone's Government, a Judge could refer small causes to his Assistants; but this enactment was altered by subsequent Governments, and no original suits can now be tried by an Assistant Judge, excepting a very small class, such as suits in which the Native Judges may be interested. He may, however, hear appeals. The singular position in which this class of public servants has been placed by the alterations in the Code, calls for grave consideration; and although it has a long time back and often presented itself to myself and others, as requiring the attention of the legislature, I have hitherto been deterred, by various causes, from alluding to it in an official manner.

Office of Assistant Judge not so useful as it ought to be; no judicial school for Civilians.

"25. The spirit of legislation has been of late to employ Natives as Judges, either for the sake of economy merely, or for their supposed efficiency, reserving to the European Civil Servants the much more difficult and important office of judging on appeals, executing decrees, and of controlling the Native Servants. These are delicate and difficult duties, requiring great practical knowledge of the detail of a court, and also an intimate acquaintance with the habits of the people, their usages, and rules of conduct. I shall not allude in this place to the knowledge of the rational rules of evidence, of procedure, and of jurisprudence, generally requisite for a Judge to possess; in short, I would say that something more is required of a Judge of appeal and control, than common sense and a merely studied acquaintance with the regulations, and that without it, a man of talent even is not likely to fill the judgment-seat, at first especially with credit either to himself or the Government.

Same subject continued.

"26. The operation, however, of our present regulations, is fast bringing the judicial branch of the Service to a condition which I cannot contemplate without anxiety. The juniors have no opportunities of learning; they are partially employed in criminal cases only (and these necessarily of too serious a nature to be intrusted to a young

Same subject continued.

man on his first entrance on public employment), and probably have little or no opportunity of gaining an insight into the business of the civil courts, till they are at once raised to the Bench, where they have to sit in final judgment on the decrees of Judges of far greater practical knowledge and experience than themselves; and that such a state of things would lead to a loss of public confidence, and to contempt of the judicial administrations, I think there is too much grounds for apprehension.

Same subject continued.

"27. The actual state of the judicial branch of the Service seems to render an early and serious consideration of the subject of importance; and, in venturing to suggest it, I would allude, with great deference, to a mode of remedying the existing defect, which would, perhaps, not be unsuccessful.

Same subject continued.

"28. By the present regulations, all original causes are tried by Native Judges, the principal of whom resides at the Sudder station, and who alone has unlimited jurisdiction. At large towns, it is generally necessary to have a court of inferior jurisdiction to relieve the Principal Sudder Ameen. I would propose to invest the Assistant Judge with concurrent jurisdiction with the chief Native Judge, whatever might be his powers.

Same subject continued.

"29. By this very simple arrangement several important ends would be gained. It would enable the Judge to limit his Assistant to such causes as he might consider him competent to investigate, with reference to his judgment, knowledge, and experience. To a very young Assistant he would refer the simplest cases, and those of a more difficult nature to a more experienced Servant only. It would give the public the advantage of two descriptions of courts, which, I rather think, would be very acceptable; and it would relieve the Principal Sudder Ameens of the large towns, and, in some cases, would allow of the reduction of a Junior Ameen.

Same subject continued.

"30. If it were left to the suitors to file their cases in either court, a competition for the confidence of the public would arise, and an index to the public opinion in regard to Native and European Judges generally and comparatively with each other, would be obtained, whereby the sometimes questioned and important fact that Natives prefer the administration of justice of the European Civil Servants to all others would be determined; but the difficulties of regulating such a system so as to prevent some Courts from being overwhelmed, appear to be considerable, and I am not prepared to say that it could be carried into a practice.

Same subject continued.

"31. If such an alteration, as alluded to in para. 28, of the present law, were to be made, I am inclined to believe that the *appellate* jurisdiction, now possessed by Principal Sudder Ameens and Assistant Judges, should be abolished, as it must be advantageous to lessen the grades of

appeal, so as to bring the final appellate court as near that of original jurisdiction as possible, and the first step of the ladder of appeal (of which there may be six) being the worst, can only promote litigation.

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*From* T. H. MADDOCK, ESQ., *Officiating Secretary to the Government of India, Legislative Department, to the Secretary to the Indian Law Commission,—(No. 295, dated 20th August* 1838.)

In continuation of my letter, No. 282, dated the 13th instant, I am directed, by the Hon'ble the President in Council, to forward to you the accompanying copies of letter, No. 1572, from the Secretary to the Government of Bombay, dated the 28th ultimo, and of its enclosure, and to request that you will lay the same before the Indian Law Commissioners.

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*From the Indian Law Commissioners, to the Hon'ble the President of the Council of India in Council,—dated 4th August* 1842.

We were directed by Mr. Secretary Maddock's letters, Nos. 282 and 295, of the 13th and 20th August 1838, to take into consideration, in connection with the system of judicial procedure, copies of certain papers on the subject of the best mode of training and employing the junior Civil Servants in the Revenue and Judicial Departments under the three Presidencies.

2. The papers contained minutes by the Members of the Council of India and correspondence with the subordinate Governments on this important subject, and we should have taken it up in its proper place in due course; but having been lately called upon to give this subject our close and immediate attention, as forming part of a reference made to the Law Commission by the Right Hon'ble the Governor General, and having in our answer to His Lordship recorded our matured opinions upon the question, we beg to submit to your Honor in Council a copy of our report to the Governor General, and request that it may be recorded as a formal reply to the official communications above referred to. We beg at the same time to annex a copy of His Lordship's letter of the 23rd ultimo to the Commission.

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*From the Indian Law Commissioners, to the Right Hon'ble the Governor General of India,—dated 2nd July* 1842.

Acknowledge His Lordship's letter of the 4th April 1842, respecting—

We have now the honor to reply to your Lordship's letter of the 4th April last.

2. This communication embraces three topics:—

1st.—The legal training and emoluments of the Company's Covenanted Judicial Servants.

1st.—The legal training in India of the Hon'ble Company's Civil Servants destined for the judicial branch of the Service, and the means of retaining in that branch such qualified persons as may once adopt it.

2nd.—The appointment of a Chief Judge to each Sudder Court.

2nd.—The expediency of appointing a Chief Judge with superior emoluments to each of the Company's Sudder or highest courts of judicature.

3rd.—The conferring upon the Sudder Courts a certain extent of original jurisdiction.

3rd.—The expediency of conferring upon the superior courts of appeal a limited extent of original civil jurisdiction.

3. We propose to submit our sentiments on these topics in the order in which we have noticed them, but we think it will conduce to a clearer understanding of the whole subject if, before entering upon the consideration of the particular points, we place before your Lordship a concise historical account of the several Judicial systems prevailing at the three Presidencies of Bengal, Madras, and Bombay, exhibiting their original character, and tracing them through their various modifications to their present state. This narrative occupies paragraphs 4 to 104 of this address.

Before submitting their sentiments on these topics, furnish an historical account of the several Judicial systems of Bengal, Madras, and Bombay.

4. On the consolidation of the Judicial system of Bengal in 1793, the administration of civil justice was vested in Zillah and City courts having unlimited original jurisdiction, Provincial courts of appeal, and the Sudder Dewanny Adawlut; the Company's highest court of appeal consisting of the Governor General and Members of Council.

Narrative of the Judicial system of Bengal:—system as consolidated in 1793.

5. The Zillah and City Judges were authorized to refer to their Registers suits for property not exceeding Rs. 200 in value, but their decrees were not valid until countersigned by the Judges.

Same subject continued.

6. The only Native courts which found a place in this system were those of certain functionaries styled Referees (Ameens), Arbitrators (Salisans), and Moonsiffs, who were empowered to try, either immediately or by reference from the Zillah or City Judge, suits for personal property not exceeding Rs. 50 in value.

Same subject continued.

7. These establishments were, perhaps, originally inadequate to the duties imposed upon them. However that may have been, it is certain that in process of time the increase of litigation, consequent on the general improvement of the country and the growing confidence in the judicial tribunals, rendered alterations in the system necessary; and, as these causes continued to operate, various methods were from time to time resorted to check the growing evil of over-burthened judicatories.

Alterations since rendered necessary by the increase of litigation.

8. These remedial measures, as they affected the European agency, consisted in removing the primary cognizance of the more valuable suits from the Zillah and City to the superior courts, in augmenting the number of Judges, and increasing the powers of single Judges of those courts, extending the judicial functions of the Registers, and appointing Assistant Judges to share the labors of the Zillah and City Judges.

Nature of the remedial measures adopted as respected European agency.

9. But the limited number of Civil Servants at the disposal of the Government, and the heavy expense attending this description of agency, presented serious obstacles to a general resort to it, whilst a liberal policy pointed to a more extensive employment of the Natives of the country as a means both of increasing the efficiency of the courts and of improving the moral condition of the people.

Ditto ditto Native agency.

10. The various changes in the civil branch of the Judicial system from 1793 up to the present time may be thus briefly stated.

Changes in the civil branch of the system from 1793 to the present time.

11. Original suits exceeding Rs. 5,000 in value were transferred from the Zillah to the Provincial courts, though, subsequently, those between Rs. 5,000 and Rs. 10,000 were allowed to be instituted in the Zillah or Provincial court at the election of the plaintiffs. Original suits above Rs. 1,000 were also made transferable from the Zillah to the Provincial court at the discretion of the Sudder Dewanny Adawlut, which court was further authorized to call up from the Provincial courts any original suits of the value of 43,103 Sicca Rupees (the amount then limited for appeals to the King in Council), which they deemed could be more conveniently and expeditiously tried by themselves. This last-mentioned power, we understand, the court never exercised.

1808.

1817.

1814.

12. Each Judge of a Provincial court, sitting singly, was empowered to perform a considerable part of the functions of the whole court.

Same subject continued. 1810—1814.

Same subject continued. 1833.

13. In 1833, the Provincial courts were abolished, and original suits above Rs. 5,000 made cognizable in the Zillah courts.

Same subject continued. 1794. 1803. 1814-1817. 1814. 1819.

14. The rule which made the Zillah Judge's countersignature essential to the validity of his Register's decrees was repealed; the Register's powers were extended to suits of Rs. 500, and might be specially extended to suits of Rs. 5,000 or Rs. 10,000. The appointment of additional Registers was provided for; and the services of the Registers of the Provincial courts were made available for the trial of original suits.

Same subject continued. 1821. 1831.

15. The office of Register to the Provincial courts was abolished in 1821, and that of Register to the Zillah courts in 1831-32.

Same subject continued. 1803. 1814. 1833.

16. The office of Assistant Judge was instituted in 1803 for the purpose of relieving the Zillah Judges of any portion of their work which circumstances prevented their performing themselves. It was abolished in 1814, but has since been revived with the designation of "Additional Judge."

Same subject continued. 1814. 1821. 1831.

17. Commissions to Natives to act as Referees and Arbitrators were re-called, and the original jurisdiction of the Moonsiffs was successively extended, *first*, to suits for personal property to the amount of Rs. 64, provided the cause of action had arisen within one year (in 1817 extended to 3 years) before the institution of the suit; *next*, to similar suits not exceeding Rs. 150; and, *lastly*, to all descriptions of suits (except for Lakhiraj lands) not exceeding Rs. 300 in value, and subject only to the general rules of limitation for the institution of suits. At this point it now stands, but the Moonsiffs have not jurisdiction over British subjects, European foreigners, or Americans, excepting in suits relating to arrears or exactions of rent.

Same subject continued. 1803. 1814. 1821—1827. 1831.

18. Sudder Ameens were first appointed in 1803 for the trial, by reference from the Zillah Judge, of suits for real and personal property to the value of Rs. 100. Their powers were afterwards enlarged to suits of Rs. 150, and, in special cases, of Rs. 500 and Rs. 1,000. This last amount had, since 1831, become the general standard.

Same subject continued. 1831. 1837.

19. Finally, in 1831, the office of Principal Sudder Ameen was constituted for the trial, by reference from the Zillah Judge, of suits to the value of Rs. 5,000. Their jurisdiction now embraces causes of an unlimited amount; and the few original suits

which remained to the Zillah Judges have thus been virtually transferred to the Native functionaries. In a recent report on the subject of special appeals, we have recommended that all suits cognizable by the Principal Sudder Ameens and Sudder Ameens should be instituted immediately in the courts of those officers.

Same subject continued.

20. It is unnecessary to detail the various changes which the system of appeals underwent during the period under review. It may be stated generally that, previous to the year 1831, a regular appeal lay to the Zillah Judge from the decrees of all his subordinate courts, and a special appeal to the Provincial court; and when such first appeals were tried by the Register or Sudder Ameen, a special appeal lay to the Zillah Judge. From the Zillah Judge's decrees in original suits, an appeal lay to the Provincial court, and a special appeal to the Sudder Dewanny Adawlut. From the decrees of the Provincial courts in original suits, an appeal lay to the Sudder.

Same subject continued.

21. Under the present system, the decrees of Moonsiffs and Sudder Ameens are appealable to the Zillah Judge, whose decisions thereon are conclusive; but the Sudder Court may authorize the reference of any such appeals to the Principal Sudder Ameen, from whose decisions thereon a special appeal lies to the Zillah Judge.* From the Principal Sudder Ameen's decrees in original suits not exceeding Rs. 5,000 in amount, an appeal lies to the Zillah Judge, and a special appeal to the Sudder Dewanny Adawlut. From the decrees of the Zillah Judges in any original suits which for special reasons they may have retained on their own files, and from the decrees of the Principal Sudder Ameens in original suits exceeding Rs. 5,000, a regular appeal lies to the Sudder Court.

Present salaries of Zillah Judges and Additional Judges, Principal Sudder Ameens, Sudder Ameens, and Moonsiffs.

22. The salary of the Zillah Judges is Rs. 2,500 per mensem, or Rs. 30,000 per annum; and that of an Additional Judge, Rs. 2,166-10-8 per mensem, or Rs. 26,000 per annum. Principal Sudder Ameens of the 1st grade receive Rs. 600; those of the 2nd grade Rs. 400 per mensem. The Sudder Ameens have Rs. 250 per mensem. Moonsiffs of the 1st grade receive Rs. 150; those of the 2nd grade, Rs. 100 per mensem.

Statement of the civil business of the Zillah and subordinate courts in the Lower Provinces for 1840.

23. The following statement shows the quantity of civil business depending before, and disposed of by, the Zillah and subordinate courts in the Lower Provinces during the year 1840.

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* In a report, dated the 4th December 1841, on the subject of special appeals, we have recommended that, from all first decisions in appeal from the decrees of Moonsiffs and Sudder Ameens, a special appeal should lie to the Sudder Dewanny Adawlut.

# STATEMENT.

| No. of Judges. | Description of Judges. | Number of suits depending on the 1st January 1840. | Number admitted within the year. | Re-admitted or received by transfer in the year. | Total. | Decreed on trial. | Dismissed on default. | Adjusted or withdrawn. | Transferred to other courts. | Total disposed of. | Depending on 1st January 1841. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Original Suits. | | | | | | | |
| 252 | Monsiffs ... ... ... ... | 37,788 | 91,563 | 7,953 | 137,304 | 57,179 | 16,318 | 15,541 | 6,665 | 95,703 | 41,601 |
| 27 | Sudder Ameens ... ... ... | 2,204 | ..... | 3,968 | 6,172 | 2,558 | 560 | 278 | 401 | 3,797 | 2,375 |
| | | | | *Original Suits and Appeals.* | | | | | | | |
| 40 | Principal Sudder Ameens ... ... | 5,799 | ..... | 10,659 | 16,458 | 8,157 | 1,236 | 278 | 1,207 | 10,878 | 5,580 |
| 26 | Zillah Judges ... ... ... | 3,219 | 17,578 | 8,299 | 29,096 | 3,768 | 295 | 103 | 20,760 | 24,926 | 4,170 |
| 4 | Additional Judges ... ... ... | | | | | | | | | | |
| | | 49,010 | 109,141 | 30,879 | 189,030 | 71,662 | 18,409 | 16,200 | 29,033 | 135,304 | 53,726 |
| | | | | *Summary and Miscellaneous Suits.* | | | | | | | |
| | Moonsiffs and Sudder Ameens ... | 18,397 | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 35,726 | 20,217 |
| | Principal Sudder Ameens ... ... | 6,292 | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 11,891 | 6,497 |
| | Zillah Judges & Additional Judges | 3,247 | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 11,771 | 2,323 |
| | | 27,936 | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 59,388 | 29,037 |

24. The system of criminal judicature, established in 1793, has, like that for the administration of civil justice, undergone extensive alterations.

Changes in the criminal branch of the system from 1793 to the present time.

25. Originally, the Zillah and City Magistrates had judicial cognizance of petty offences only, which they were competent to punish with 15 days' imprisonment, or fine not exceeding Rs. 50, except in the cases of certain descriptions of landholders, when the fine might be increased to Rs. 200. For petty thefts, they could award corporal punishment,* or one month's imprisonment. All other trials were disposed of by the Courts of Circuit and the Nizamut Adawlut.

Same subject continued.

26. The first enlargement of the Magistrate's power extended to sentences of imprisonment not exceeding six months, with corporal punishment in cases of theft, and in other cases with fine not exceeding Rs. 200, commutable, if not paid, to a further imprisonment not exceeding six months. Subsequently, they were empowered to pass sentence of two years' imprisonment, with corporal punishment, on persons convicted before them of aggravated thefts, simple burglaries, or receiving stolen property, to which cases of conviction of two or more thefts were afterwards added: And lastly, they were empowered to sentence to one year's imprisonment, and Rs. 200 fine, commutable, if not paid, to a further imprisonment of one year, persons convicted of affrays unattended with certain circumstances of aggravation. By some recent Acts, certain specific offences have also been made cognizable by the Magistrates, to some of which punishments are affixed exceeding the usual jurisdiction of these officers.†

Same subject continued. 1818. 1829. 1828.

† See the Post Office Act No. XVII of 1837, and the Act respecting the exportation of warlike stores, No. XVIII of 1841.

27. According to the original plan, the Zillah Judges were likewise Magistrates; but in 1810, the separation of the two offices was legalized, and at the same time the offices of Assistant Magistrate and Joint-Magistrate were constituted with the same judicial powers as belonged to the Magistrate: but the former office has been discontinued. The offices of Magistrate and Joint-Magistrate are now held by Collectors

Same subject continued.

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* Corporal punishment was abolished in 1834, and the under-mentioned additional periods of imprisonment substituted in sentences passed by—

| | |
|---|---|
| The Nizamut Adawlut and Sessions Courts | ... 2 years. |
| Magistrates and Joint Magistrates | ... 1 year. |
| Assistants, Principal Sudder Ameens, and Sudder Ameens | ... 1 month. |

[This change is to be attended to in the perusal of what follows.]

and Deputy Collectors, or the former are held as distinct appointments in the Lower Provinces.

28. To afford relief to the Magistrates, they were authorized to refer for trial to their Assistants such petty offences as were originally within their own judicial cognizance. Subsequently, the Assistants were empowered to adjudge both fine and imprisonment, commuting the fine, if not paid, to an additional imprisonment of 15 days, and, in cases of theft, both corporal punishment and imprisonment. And, eventually, the Government was authorized to invest an Assistant with special power to pass sentence of imprisonment not exceeding six months, with a fine of Rs. 200, commutable to a further imprisonment of six months, and, in cases of theft, to six months' imprisonment and corporal punishment. At the same time the Magistrates were authorized to refer to the Hindoo and Mahomedan Law Officers and Sudder Ameens of the Zillah courts, trials for offences not requiring a severer punishment than 15 days' imprisonment and a fine of Rs. 50, commutable, if not paid, to a further imprisonment of 15 days, and, in cases of theft, one month's imprisonment and corporal punishment. This rule was made applicable also to Principal Sudder Ameens.

Same subject continued.

1797.

1807.

1821.

1831.

29. The Judges of the Provincial courts were also Judges of the Courts of Circuit. The jurisdiction of these courts was eventually extended, in ordinary cases, to sentences of imprisonment for seven years, with corporal punishment for certain descriptions of offences; in cases of robbery by open violence unattended with certain circumstances of aggravation, and in aggravated cases of theft, burglary, and receiving stolen property, to 14 years' imprisonment with corporal punishment; in cases of wounding with intent to murder, to 14 years' imprisonment. These courts had also the power of imposing fines, fixing a specific period of imprisonment in default of payment.

Same subject continued.

30. To increase the efficiency of the Courts of Circuit for the despatch of current and appeal business, single Judges of the court were invested with similar powers to those conferred upon them in their civil capacity.

Same subject continued.

31. All trials in which the Judge of Circuit differed from his Mahomedan Law Officer regarding the guilt or innocence of a prisoner, and all trials in which the offence proved required a severer punishment than the Circuit Court was competent to award, were referred for the determination of the Nizamut Adawlut.

Same subject continued.

Same subject continued. 1829. 1832.

32. In 1829, the Courts of Circuit were abolished, and their duties were transferred to Commissioners of Circuit, who were likewise Commissioners of Revenue. But this plan was found to impose too onerous duties on the Commissioners; and, since 1832, the Zillah Judges, in the capacity of Sessions Judges, have, with few exceptions, discharged the functions of the former Courts of Circuit.

Same subject continued.

33. Formerly, the course of appeal in criminal cases was from the Assistants, Principal Sudder Ameens, Sudder Ameens, and Law officers, to the Magistrate or Joint-Magistrate; and from the orders of the latter officers to the Courts of Circuit or Sessions, with a further appeal to the Nizamut Adawlut.

Same subject continued. Act XXXI of 1841.

34. The system of criminal appeals has been lately revised, and the following are the rules now in force:—

From the sentences and orders of Assistants, Principal Sudder Ameens, Sudder Ameens, and Law Officers, one appeal lies to the Magistrate or Joint-Magistrate.

From those of Magistrates and Joint-Magistrates, and Assistants vested with special powers (except in certain minor cases), one appeal lies to the Sessions Judge.

And from sentences or orders passed in criminal trials by the Sessions Judges, one appeal lies to the Nizamut Adawlut.

The decisions of the appellate authorities on such appeals are final, except that a power is vested in the Nizamut Adawlut to call for the records of any criminal trials of any subordinate court, and pass orders thereon. But no superior court has power to enhance any punishment awarded, or to punish any person acquitted by the court below.

Present salaries of Collectors and Magistrates, Magistrates, Deputy Collectors and Joint-Magistrates, Assistants, and Law Officers.

35. The salary of a Collector and Magistrate in the North-Western Provinces is, we believe, Rs. 2,250 per mensem, or Rs. 27,000 per annum; in the Lower Provinces, Rs. 2,000 per mensem, or Rs. 24,000 per annum. That of a Magistrate is Rs. 1,125 per mensem, or Rs. 13,500 per annum. Deputy Collectors and Joint-Magistrates of the 1st grade receive Rs. 1,000 per mensem, or Rs. 12,000 per annum; those of the 2nd grade, Rs. 700 per mensem, or Rs. 8,400 per annum. Assistants to Collectors and Magistrates and to Deputy Collectors and Joint-Magistrates receive Rs. 400 per mensem, or Rs. 4,800 per annum. The salaries of the Hindoo and Mahomedan Law Officers, not being Sudder Ameens, are Rs. 60 and Rs. 100 per mensem respectively.

Statement of the criminal business of the Zillah and subordinate courts in the Lower Provinces for 1840.

36. The following statement shows the quantity of criminal business depending before, and disposed of by, the Sessions and subordinate courts in the Lower Provinces during the year 1840:—

## STATEMENT.

| Number of Officers | Description of Officers. | Number of prisoners under examination on the 1st January 1840. | Number apprehended in 1840. | Total. | Convicted. | Acquitted. | Committed to the Sessions. | Died, escaped, or transferred. | Total of prisoners disposed of. | Prisoners remaining on the 1st January 1841. | Remarks. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 27<br>21<br>30<br>40<br>27<br>43 | Magistrates.<br>Joint-Magistrates.<br>Assistants to Magistrates.<br>Principal Sudder Ameens.<br>Sudder Ameens.<br>Law Officers not being Sudder Ameens. | 2,162 | 64,193* | 66,354 | 40,118 | 19,547 | 3,597 | 643 | 63,905† | 2,449 | * Heinous cases .. 16,739<br>Petty cases .. 47,453<br>64,192<br>† Number of cases disposed of by P. S. Ameens 1,895<br>Sudder Ameens .. 1,325<br>Law Officers .. 3,946<br>7,166 |
| | | Cases depending, 1st Jan. 1840. | Cases admitted in 1840. | Total. | | | | | Total Cases disposed of in 1840. | Cases remaining, 1st Jan. 1841. | |
| | Magistrates and Joint-Magistrates. | 62 | 1,862 | 1,924 | | | | | 1,384 | 540 | These are cases of forcible dispossession or disturbance of possession of land, &c. |
| | | Number of prisoners under trial, 1st Jan. 1840. | Committed or referred back by Nizamut Adawlut, 1840. | Total. | Convicted. | Acquitted. | Referred to Nizamut Adawlut. | Commitment cancelled, died, or escaped. | Total prisoners disposed of. | Prisoners remaining under trial, 1st Jan. 1841. | |
| 26<br>1 | Session Judges<br>Commissioner of Circuit. | 803 | 3,633 | 4,436 | 2,302 | 1,001 | 598 | 66 | 3,967 | 469 | |
| | | Cases depending, 1st Jan. 1840. | Cases admitted in 1840. | Total | | | | | Total cases disposed of. | Cases remaining, 1st Jan. 1841. | |
| | | 513 | 3,607 | 4,120 | | | | | 3,757 | 363 | Appeals from Magistrates and Joint-Magistrates in criminal trials.‡ |
| | | 77 | 846 | 923 | | | | | 824 | 99 | Ditto ditto in miscellaneous cases. |

During this year, 1,361 persons were required by the Magistrates to find security for their good behaviour, and the cases of 621 security prisoners were reviewed by the Sessions Judges.

‡ These appeals include second appeals, which are now cut off by Act No. XXXI of 1841.

37. The Courts of Sudder Dewanny and Nizamut Adawlut at Fort William, as constituted in 1793, consisted of the Governor General and the Members of the Supreme Council; but to obviate the delay of justice which arose under this arrangement, and to separate more distinctly the judicial functions of the Government from its legislative and executive authority, each Court was made to consist of three Judges, styled, respectively, chief, 2nd, and 3rd Judge,—the chief Judge being one of the civil Members of Council, and the two puisne Judges, selected from among the Civil Servants, not Members of Council. Two Judges were necessary to hold a court; and, on a difference of opinion arising, the voices of the majority determined the question. The special sittings of the court were summoned by the Register under the direction of the chief Judge; the senior puisne Judge exercising the power of the chief Judge during the non-attendance of the latter.

Changes in the constitution of the Courts of Sudder Dewanny and Nizamut Adawlut from 1793 to the present time.

1801.

38. The duties of chief Judge, however, were found incompatible with those of a Member of Council, and to complete the separation of the judicial from the executive authority, it was enacted that the chief Judge should be selected in the same manner as the puisne Judges. But this law was repealed two years afterwards; the office of chief Judge was re-placed on its former footing, and provision was made for the appointment of three puisne Judges.

Same subject continued.

1805.

1807.

39. The business of the courts being greatly on the increase, the Government was empowered to appoint as many puisne Judges as might be found necessary for its despatch; and to prevent the interruptions in the proceedings of the courts from the occasional absence or indisposition of the Judges, and further to increase the efficiency of the courts, any Judge sitting singly was empowered to hold a court, and generally to pass orders or judgments, excepting for the modification or reversal of the orders or judgments of one or more of the Judges of the court, or of those of an inferior court.

Same subject continued.

1811.

1808-1810.

1814-1817.

40. It was provided, also, that, in cases of a difference of opinion between four Judges present, and the number of voices being equal, the Chief Judge, concurring with any one of the other Judges, should possess a casting vote.

Same subject continued.

41. The distinctive appellations of chief, 2nd, 3rd, 4th, &c., Judges of the Sudder Courts having, in some instances, been found productive of inconvenience, they were abolished in 1829.

Same subject continued.

42. In the changes in the Judicial system which took place in 1831, separate Courts of Sudder Dewanny and Nizamut Adawlut were established at Allahabad for the Western Provinces; and, at the same time, in consequence of the accumulation of appeals, civil and criminal, before the Sudder Courts at Calcutta, the powers of single Judges were further increased; the rules on which subject were also made applicable to the Western Court. And it was provided that when, in any case, the opinions of the Judges of one Court of Sudder Dewanny or Nizamut Adawlut were balanced, the question should be referred to a Judge of the other Court of Sudder Dewanny or Nizamut Adawlut.

Same subject continued.

43. By a recent enactment, the Sudder Courts have been empowered to transfer to their Registers the duty of preparing appealed cases for trial, and of executing the decrees and orders of those courts.

Same subject continued.

44. From 1811 to 1829, the Sudder Court of Calcutta was composed of a chief Judge (not being a Member of the Supreme Council), whose salary was 5,000 Sicca Rupees per mensem, and puisne Judges drawing Sicca Rupees 4,583-5-4. But the powers of the chief Judge, as described above, differed in nothing from those of his colleagues, excepting that special meetings of the court were summoned, when necessary, by his direction, and in cases of equality of voices when four Judges were present, the chief Judge, concurring with one of the other Judges, possessed a casting vote.

Former salaries of the Sudder Judges.

45. The Presidency Sudder Court now consists of four permanent and three temporary Judges;—we believe, however, that this arrangement is at present in abeyance by order of the Hon'ble Court of Directors;—that at Allahabad, of three permanent Judges. The salary of the permanent Judges is 4,350 Company's Rupees per mensem; the temporary Judges receive Rs. 3,500.

Present salaries of the Sudder Judges.

Co.'s Rs. 52,200 per annum.

Co.'s Rs. 42,000 per annum.

Statements of civil and criminal business of the Courts of Sudder Dewanny and Nizamut Adawlut for 1841 and 1840 respectively.

46. The following statements show the quantity of civil and criminal business depending before, and disposed of by, the Courts of Sudder Dewanny and Nizamut Adawlut at Calcutta; the former in 1841, the latter in 1840:—

## *Civil Business*, 1841.

| | Depending, 1st January 1840. | Admitted in 1841. | Total. | Decided on trial. | Dismissed on default. | Adjusted or withdrawn. | Transferred to other Courts. | Total disposed of. | Depending on 1st January 1842. |
|---|---|---|---|---|---|---|---|---|---|
| Regular Appeals ... ... | 446 | 194 | 640 | 220 | 38 | 12 | ..... | 270 | 370 |
| Special Appeals ... ... | 219 | 134 | 353 | 158 | 6 | 2 | ..... | 166 | 187 |
| Total ... .. | 665 | 328 | 993 | 378 | 44 | 14 | ... ..... | 436 | 557 |
| | | | | | Struck off or otherwise disposed of. | | | | |
| Miscellaneous and Summary Appeals ... ... ... | 477 | 2,100 | 2,577 | 985 | 1,014 | ..... | ..... | 1,999 | 576 |
| Miscellaneous petitions and procedure ... ... .. | ..... | ... . ..... | ..... | ..... | ..... | ..... | ..... | 4,770 | ..... |

## *Criminal Business*, 1840.

| | Number of prisoners under trial, 1st Jan. 1840. | Prisoners referred in 1840. | Total under trial. | Convicted. | Acquitted. | Remanded or commitments cancelled. | Died or escaped. | Total prisoners disposed of. | Total prisoners remaining, 1st Jan. 1841. |
|---|---|---|---|---|---|---|---|---|---|
| Criminal Trials ... ... ... | 146 | 598 | 744 | 365 | 228 | 59 | 8 | 655 | 89 |
| | Case pending, 1st Jan. 1840. | Cases received in 1840. | Total cases. | | | | | Total cases disposed of. | Cases remng. 1st Jan. 1841. |
| Appeals from sentences of Commissioners of Circuit and Sessions Judges, or trials called for ... | 20 | 95 | 115 | ..... | ..... | ..... | ..... | 100 | 15 |
| *Special appeals from orders of Commissioners of Circuit and Sessions Judges on appeals from Magistrates and Joint-Magistrates .. | 110 | 387 | 497 | ..... .. | ..... | ..... | ..... | 432 | 65 |

* These special appeals are now cut off by Act No. XXXI of 1841.

47. We should observe that the preceding narrative does not embrace those parts of the territories of the Bengal Presidency in which the regulations are not in force, and in which are established special systems of judicial administration; but the statements of business in the Calcutta Sudder Courts include cases received from the special courts subject to its jurisdiction.

Preceding narrative does not embrace the Non-Regulation Provinces.

48. The Madras Judicial system, instituted in 1802, was formed upon the model of that established in 1793 for Bengal. It consisted of—

Madras Judicial system instituted in 1802.

*Civil Judicatories.*
Zillah courts.

Zillah courts for the trial of civil suits, in the first instance, without any limitation as to the amount or value of the subject of litigation;

Provincial courts of appeal.

Provincial courts of appeal for hearing appeals from the Zillah courts;

Sudder Adawlut.

And a Sudder Adawlut at the Presidency for hearing appeals from the Provincial Courts.

49. The Judges of Zillah courts were authorized to refer to their Registers suits to an amount not exceeding Rs. 200, with a discretionary power to revise their decisions and to grant commissions to *Natives* to hear and decide suits for a value not exceeding Rs. 80, *viz.*, suits *preferred* to them *directly* against *under-renters* or *ryots*, suits against other persons referred to them by the Judge, and suits submitted to them as *arbitrators*.

Registers of Zillah courts.

Native Commissioners.

50. In 1809, the original jurisdiction of the Zillah courts was limited to suits not exceeding Rs. 5,000, and suits exceeding that amount were transferred to the jurisdiction of the Provincial courts. In the same year the occasional appointment of Assistant Judges to aid the Judges of Zillah courts in disposing of arrears was authorised and the jurisdiction of Registers was extended to Rs. 500. The original jurisdiction of Native Commissioners or Moonsiffs was also extended to embrace *all suits* for money or personal property within the former limitation of Rs. 80, and authority was given for the appointment of Head *Native Commissioners*, or Sudder Ameens, for the trial of suits *referred* to them by the Judges not exceeding Rs. 100. The same jurisdiction was conferred upon the Law Officers of the Zillah courts *ex-officio*.

Jurisdiction of Zillah courts limited.

Jurisdiction of Provincial courts extended.

Assistant Judges of Zillah court.

Registers' jurisdiction extended.

Native Commissioners or Moonsiffs' idem.

Head Native Commissioners or Sudder Ameens appointed.

51. In 1816, the office of Moonsiff was put on an improved footing, following the arrangement made in Bengal in 1814. Every Zillah was divided

District Moonsiffs.

into districts, comprising one or more whole Tahsildarees or Police jurisdictions, to each of which a "District Moonsiff" was appointed with power to determine suits to the value of Rs. 200. In the same year a regulation was passed, declaring the head inhabitants of villages to be Moonsiffs in their respective villages, with power to decide suits to the value of Rs. 10, and to settle by arbitration suits to the value of Rs. 100. And the old institution of Punchayets was revived for the adjudication of suits without limitation of amount or value upon the agreement of both parties to that mode of trial,—Village Punchayets to be assembled by the Village Moonsiffs, and District Punchayets by the District Moonsiffs,—the jurisdiction of the former being restricted to suits for money or other personal property, that of the latter being unrestricted. The appointment of Sudder Ameens was restricted to the Law Officers of the Zillah courts, the jurisdiction being extended to Rs. 300.

Village Moonsiffs.

Punchayets.

Jurisdiction of Sudder Ameens extended.

52. In 1821, the jurisdiction of Registers of Zillah courts was extended to Rs. 1,000; and of Sudder Ameens, to Rs. 750; and of District Moonsiffs, to Rs. 500.

Jurisdiction of Registers, Sudder Ameens, and District Moonsiffs, extended.

53. In 1833 the jurisdiction of these officers was further extended to Rs. 3,000, Rs. 2,500, and Rs. 1,000 respectively; and these are the present limitations.

Jurisdiction of Registers, Sudder Ameens, and District Moonsiffs, further extended.

54. There are 19 districts in the Madras Presidency. Formerly, each district constituted a Zillah, and had its own Zillah court. But in 1827, a considerable change was made, first by the establishment of auxiliary courts under Assistant Judges with the full power and authority of Zillah courts, and afterwards, of courts with nearly* similar powers under Native Judges, now called Principal Sudder Ameens. In eight of the 19 districts the Zillah courts have been abolished. In seven of those districts they have been succeeded by courts under Assistant Judges, and in the remaining one by a court under a Principal Sudder Ameen. In one Zillah (Malabar), besides the Zillah court, there are two auxiliary courts under Assistant Judges. In another Zillah (Canara), there are also two auxiliary courts under Principal Sudder Ameens.

Auxiliary Zillah Courts established under Assistant Judges and Native Judges.

55. The Provincial courts are each composed of three Judges, members of the Civil Service. Until 1831, two Judges were required to constitute a court. In that year a regulation was passed authorizing the Judges to sit singly, subject to the restriction of not reversing any order or decision passed by another Judge of the court, or by any subordinate court.

Provincial courts.

* The difference is that Principal Sudder Ameens are restricted from taking cognizance of suits in which European officers of Government are concerned.

Provincial courts.

56. At first the Provincial courts had no original jurisdiction, except in cases specially transmitted to them by the Sudder Adawlut. Since 1809, they have had original jurisdiction in all cases above Rs. 5,000.

Sudder Adawlut.

57. The Sudder Adawlut, or chief court of appeal, as originally constituted, consisted, as in Bengal, of the Governor and the Members of Council. By Regulation IV. of 1806, it was enacted that the Governor should be the Chief Judge, and that the 2nd and 3rd Judges should be appointed from among the Covenanted Civil Servants, not being Members of Council. By Regulation I. of 1807, it was enacted that the Chief Judge should also be selected from among the Covenanted Civil Servants, not being Members of Council. By Regulation III. of the same year, it was enacted that the courts should, in future, consist of a Chief Judge, being a Member of Council, but not the Governor, nor the Commander-in-Chief, and of three Puisne Judges, to be selected from among the Company's Covenanted Servants; and this constitution has continued ever since, except that the Governor in Council is empowered by law to appoint additional Judges at his discretion.

Sudder Adawlut.

58. In 1816, the Sudder Adawlut was empowered to call up from the Provincial courts original suits amounting to Rs. 45,000. This power, it is believed, has never been exercised.

Same subject continued.

59. Until 1839, two Judges were required to constitute a court. By Regulation VIII. of that year, the Judges were empowered to sit singly, subject to the restriction of not reversing orders and decisions passed by another Judge of the court or by subordinate courts. The Puisne Judges are designated as 1st, 2nd, and 3rd; when sitting together, the senior presides, but he has not a casting voice. If three Judges are present, the majority decide; if two, and they differ, they are to wait for the attendance of the 3rd. The Chief Judge never sits except when one of the Puisne Judges is absent, and there is a difference of opinion between the two who are present, or when there is only one Judge present, and a case arises in which he thinks the decision of the lower court should be reversed, for which the concurrence of another Judge is necessary.

60. Below are presented at one view the several civil judicatories at present existing, with a specification of their jurisdiction, original and appellate:—

| COURT. | ORIGINAL JURISDICTION. | APPELLATE JURISDICTION. |
|---|---|---|
| *Sudder Adawlut.* Composed of a Chief Judge, a Member of the Council, and three Puisne Judges, members of the Civil Service. Salary of each Puisne Judge, Rs. 49,000 per annum. | Authorized at discretion to call up original suits filed in the Provincial courts, amounting to Rs. 45,000 and upwards. | Regular appeals from decrees of the Provincial courts in original suits; special, from decrees of the Provincial courts on regular appeals from decrees of Zillah Judges, and from decrees of Assistant Judges and Principal Sudder Ameens in suits above Rs. 1,000. |
| *Provincial Courts.* Each composed of three Judges, members of the Civil Service. The salary of the— 1st Judge, Rs. 42,000 per annum. 2nd Judge, Rs. 38,500 per annum. 3rd Judge, Rs. 35,000 per annum. | Original suits above Rs. 5,000. | Regular appeals from decrees of Zillah Judges in original suits, and from decrees of Assistant Judges and Principal Sudder Ameens in original suits above Rs. 1,000; special, from decrees of Zillah Judges on regular appeals from Assistant Judges, Principal Sudder Ameens, Registers, and Sudder Ameens. |
| *Zillah Courts.* Salary of the Judge, Rs. 28,000 per annum. | Original suits to the amount of Rs. 5,000. | Regular appeals from decrees of Assistant Judges and Principal Sudder Ameens in original suits not exceeding Rs. 1,000, and from decrees of Registers, Sudder Ameens, and District Moonsiffs; special, from decrees of Assistant Judges, Principal Sudder Ameens, Registers, and Sudder Ameens on regular appeals from District Moonsiffs. |

| COURT. | ORIGINAL JURISDICTION. | APPELLATE JURISDICTION. |
|---|---|---|
| *Auxiliary Courts.* | | |
| Under Assistant Judges. Salary of the Assistant Judges, Rs. 16,800 per annum. | Original suits to the amount of Rs. 5,000. | Regular appeals from decrees of Sudder Ameens and District Moonsiffs; special, from decrees of Sudder Ameens on regular appeals from District Moonsiffs. |
| Under Principal Sudder Ameens. Salary of Principal Sudder Ameen (Uncovenanted) Rs. 6,000 per annum. | Original suits to the amount of Rs. 5,000. | Regular appeals from decrees of District Moonsiffs. |
| *Attached to Zillah Courts.* | | |
| Registers. Salary—<br>*1st Class*, Rs. 8,400 per annum.<br>*2nd Class*, Rs. 7,200 per annum. | Original suits referred by the Judge to the amount of Rs. 3,000. | Regular appeals from decrees of Sudder Ameens and District Moonsiffs referred by the Judge. |
| *Attached to Zillah and Auxiliary Courts.* | | |
| Sudder Ameens. Salary, Rs. 2,400 per annum. | Original suits referred by the Judge, &c., to the amount of Rs. 2,500. | Regular appeals from District Moonsiffs referred by the Judge, &c. |
| *District Moonsiffs.* | | |
| Salary—<br>*1st Class*, Rs. 1,680 per annum.<br>*2nd Class*, Rs. 1,380 per annum.<br>*3rd Class*, Rs. 1,200 per annum. | Original suits to the amount of Rs. 1,000 preferred directly, or referred by the Judge. | |

| COURT. | ORIGINAL JURISDICTION. | APPELLATE JURISDICTION. |
|---|---|---|
| Village Moonsiffs. | Original suits to the amount of Rs. 10 preferred directly, as arbitrator at the request of both parties to the amount of Rs. 100; jurisdiction confined to suits for money or other personal property. | |
| District Punchayets assembled by District Moonsiffs. | Suits for real and personal property without limitation of amount or value, both parties consenting. | |
| Village Punchayets assembled by Village Moonsiffs. | Suits for money or other personal property without limitation of amount or value, both parties consenting. | |

Criminal judicatories. Office of Magistrate vested in Zillah Judges.

61. As in Bengal, the office of Magistrate was originally vested in the Zillah Judges, who were also charged with the superintendence of the police. The jurisdiction of the Magistrate was confined to petty offences, and petty thefts, as it was in Bengal prior to 1807, their power of punishment being limited to imprisonment for 15 days, or a fine of Rs. 50 (Rs. 200 in the cases of Zemindars, &c.), for the former, and imprisonment for one month, or 30 strokes with a rattan, for the latter.

The same transferred to Collectors.

62. In 1816, a great change was made by transferring the office of Magistrate, and the superintendence of the police, to the Collectors of revenue with the same jurisdiction and powers of punishment as had been previously vested in the Zillah Judges. The Zillah Judges were still, however, charged with criminal jurisdiction, the cognizance of cases punishable by six months' imprisonment with 30 strokes with a rattan, or a fine of Rs. 200, having been transferred to them from the Courts of Circuit; and to them was left the duty of committing to the Court of Circuit persons charged with graver offences brought before them by the Magistrate or by the police.

63. In 1822, the criminal Judges were empowered in special cases to pass sentence of imprisonment for two years, with corporal punishment not exceeding 30 strokes with a rattan (since commuted to 150 lashes with cat-of-nine-tails), and this is the maximum of their power at present.

Powers of the criminal Judges extended.

64. Assistant Judges of auxiliary courts are joint criminal Judges of their Zillahs, and have the same power and authority as the criminal Judge; so also have Principal Sudder Ameens, except in cases in which persons charged with offences are Europeans or Americans.

Joint criminal Judges.

Principal Sudder Ameens.

65. Sudder Ameens of Zillah and auxiliary courts are authorized to exercise jurisdiction in criminal cases referred to them by the criminal Judge, joint criminal Judge, or Principal Sudder Ameen presiding in the court, with the same power of punishment as the presiding officer, but their sentences are liable to revision by him.

Sudder Ameens.

66. The jurisdiction of Magistrates remains in general as it was settled in 1816; but, as in Bengal, they have extended powers under particular Acts. Sub-Collectors are Joint-Magistrates, and Assistant Collectors are Assistant Magistrates, with the powers of the Magistrates within the local limits of their charges, or in cases referred to them. The Courts of Circuit were originally constituted as in Bengal, and still exist, exercising the same jurisdiction and powers as were exercised by those in Bengal until 1829.

Magistrates, Joint-Magistrates, and Assistants.

Powers within the local limits of their charges, or in cases referred to them.

67. The Judges of the Sudder Adawlut are also Judges of the Fouzdaree Adawlut. The jurisdiction of the Court corresponds with that of the Nizamut Adawlut of Bengal.

Fouzdaree Adawlut.

68. We subjoin statements of the administration of civil and criminal justice by the several judicatories in the Presidency of Madras from 1st July 1839 to 30th June 1840, the latest period, 12 months, of which we are able to give any account.

69. We have recommended* the abolition of the Provincial courts, and have proposed to establish 18 superior Zillah courts to take up the whole of the appellate jurisdiction heretofore exercised by them (except in cases liable to the jurisdiction of the Privy Council reserved for the Sudder adawlut), together with the appellate jurisdiction of the Zillah and auxiliary courts as at present constituted, and to organize a set of subordinate

Changes lately recommended.

Civil Department.

* Reports, 21st August 1840, and 10th July 1841.

but independent Zillah courts by continuing those already established in some districts under Assistant Judges and Principal Sudder Ameens, and by establishing others of the same class in all the rest, to exercise original jurisdiction in all cases now cognizable originally as well by the Provincial* courts as by the present Zillah and auxiliary courts, that is to say, in all cases beyond the jurisdiction of District Moonsiffs, and in all cases within the jurisdiction of District Moonsiffs in which the parties suing prefer to have their causes tried and decided by them, but not to exercise appellate jurisdiction, except in cases referred to them by the superior Zillah court or under special orders.

70. We have also proposed that the office of Register shall be abolished.

71. We have recommended that the subordinate Zillah courts shall be conducted partly by Assistant Judges and partly by Principal Sudder Ameens; or, in other words, partly by Covenanted Civil Servants and partly by Natives and other persons not Covenanted, at the discretion of the local Government. In making this recommendation, we stated † that we looked to dispensing eventually with Assistant Judges altogether, and placing all the Judges in courts of this class on the footing of Principal Sudder Ameens, but that we thought it expedient that the change should be brought about gradually.

72. The subject has been referred to the Government of Madras, with an intimation from the Government of India, that it is considered desirable to get rid of the class of Assistant Judges altogether, and to introduce the principle of making over to Uncovenanted Judges (Native or European) the duties of original jurisdiction, unless in cases reserved on very special grounds, and of confining the European Covenanted Judges to the decision of appeals and to the functions of general control. It is not expected that it will be possible to do this all at once, but the Governor General in Council has expressed a hope that it will not be necessary, in carrying the proposed reforms into effect, to add to the present number of Covenanted Assistant Judges, which is above shown to be nine.

Criminal Department.

73. In the Department of criminal justice we have recommended that the jurisdiction now exercised by the Courts of Circuit should be vested in the Judges of the superior Zillah courts as Sessions Judges, and that the present jurisdiction of criminal Judges shall be exercised by the Judges sitting in the subordinate Zillah courts, who shall also commit to the superior court persons charged with crimes and offences beyond their own jurisdiction, as the criminal Judges now commit to the Courts of Circuit, leaving the existing system untouched in other respects. But we believe that further changes have been proposed by the Government of India.

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* Report, 4th December 1841.

† Report, 21st August 1840.

*Statement showing the civil business done by the courts in the Presidency of Madras, 1839-40, and remaining.*

| | Original Suits. | | | Appeals. | | |
|---|---|---|---|---|---|---|
| | Disposed of. | Instituted. | Depending. | Disposed of. | Instituted. | Depending. |
| Sudder Adawlut ... ... | ... | ... | ... | 12 | 24 | 42 |
| *Provincial Courts of Appeal.* | | | | | | |
| Centre ... ... ... | 9 | 12 | 22 | 75 | 67 | 90 |
| Northern ... ... ... | 18 | 11 | 29 | 38 | 29 | 59 |
| Southern ... ... ... | 10 | 7 | 5 | 30 | 35 | 13 |
| Western ... ... ... | 4 | 4 | 4 | 23 | 39 | 46 |
| Total ... | 41 | 34 | 60 | 166 | 170 | 208 |
| *Superior Zillah Judicatories.* | | | | | | |
| Judges and Assistant Judges .. | 1,167 | *9,288 | 1,381 | 1,107 | *2,348 | 1,581 |
| †Assistant Judge attached to a Zillah Court ... ... | 2 | * | 35 | 62 | ... | 164 |
| Principal Sudder Ameens ... ... | 135 | *643 | 108 | 59 | 59 | 25 |
| Registers ... ... ... | 402 | * | 395 | 339 | * | 350 |
| Sudder Ameens ... ... | 7,445 | * | 3,074 | 662 | * | 183 |
| Superior Zillah Judicatories } Total ... | 9,151 | 9,931 | 4,993 | 2,229 | 2,407 | 2,303 |
| *Inferior Zillah Judicatories.* | | | | | | |
| Moonsiffs ... { District... ... | 52,395 | 55,336 | 23,018 | | | |
| { Village ... ... | 4,035 | 3,926 | 1,854 | | | |
| Total ... | 56,430 | 59,262 | 24,872 | | | |
| Punchayets ... { District... ... | 16 | 16 | 21 | | | |
| { Village ... .. | 14 | 6 | 6 | | | |
| Total ... | 30 | 22 | 27 | | | |
| Inferior Zillah Judicatories } Total ... | 56,460 | 59,284 | 24,899 | | | |
| Grand Total ... | 65,652 | 69,249 | 29,952 | 2,395 | 2,577 | 2,511 |

* No suits are instituted before the Register and Sudder Ameens. What they receive are referred to them by the Judge, Assistant Judge, or Principal Sudder Ameen of the Court, before whom all are instituted.

† Under Regulation VII of 1809.

*Abstract of the administration of Criminal Justice by the Judicial Functionaries in the Madras Presidency, 1839-40.*

| | Balance. | Offenders apprehended. | Total number of persons charged under the Police Courts of Criminal Jurisdiction. | Acquitted or discharged. | Convicted and punished. | Confined. | | Fine. | Flogging. | Imprisonment. | | | Imprisonment. | | | | Detained for security. | Committed for trial. | Transferred. | Died, insane, &c. | Balance remaining. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | Choultra. | Stocks. | | | Simple. | With fine. | With flogging. | Simple. | | With flogging. | | | | | | |
| | | | | | | | | | | | | | Not exceeding 7 years. | Above 7 years. | Not exceeding 7 years. | Above 7 years. | | | | | |
| Village Police .. | .... | 5,700 | 5,700 | 2,365 | 3,335 | 2,344 | 991 | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. |
| District ditto .. | 2,423 | 106,660 | 109,083 | 79,257 | 27,338 | 8,404 | 484 | 18,180 | 270 | .. | .. | .. | .. | .. | .. | .. | .. | .. | 102 | .. | 2,386 |
| Magistrate .. | 72 | 7,920 | 7,992 | 5,237 | 2,695 | .. | .. | 1,727 | 216 | 812 | . | .. | .. | .. | .. | .. | .. | .. | . | .. | 60 |
| Criminal Courts .. | .... | .... | 7,752 | 2,975 | 2,140 | .. | .. | 515 | 39 | 1,248 | 78 | 260 | .. | .. | .. | .. | 318 | 1,800 | 10 | 15 | 494 |
| Circuit ditto .. | .... | .... | 2,093 | 727 | 781 | .. | .. | .. | .. | .. | 9 | . | 380 | 341 | 21 | 30 | .. | .. | .. | .. | 585 |
| Total .. | .... | .... | 132,620 | 90,561 | 36,289 | 10,748 | 1,475 | 20,422 | 525 | 2,060 | 87 | 260 | 380 | 341 | 21 | 30 | 318 | 1,800 | 112 | 15 | 3,525 |

| | Death. | Transportation. | | Imprisonment for life. | | Imprisonment. | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | With flogging. | Without flogging. | | | Simple. | | With flogging. | |
| | | | | | | Under 7 years. | Above 7 years. | Under 7 years. | Above 7 years. |
| Fouzdaree Adawlut .. | 52 | 9 | 85 | 14 | .. | 58 | 62 | 2 | 5 |

74. The Presidency of Bombay comprises twelve districts, of which six are on the coast (Guzerat and the Konkans), and six above the Ghâts (the Dekhan, Khandeish, and the Southern Marhatta country).

Bombay Presidency. Number of districts comprised therein.

75. Under the system which obtained until 1827, each district had a Judge and a Collector, except in the territories above the Ghâts, where, after the Dekhan was formed into Zillahs in that year one Judge presided over two Collectorates.

Each district how superintended before 1827.

76. The European judicial functionaries in each Zillah were under the denomination of Judge, Register, and Assistant Register, vested with the trial of all original suits, except those of very small amount. The Judge tried all original suits beyond the cognizance of the Register, and all appeals. The Register's jurisdiction was at first limited to suits of Rs. 200, but his decrees were final up to Rs. 25. His powers were afterwards raised to Rs. 500, and Assistant Registers were appointed for trial of the suits under Rs. 200, which the Register used to decide.

Civil courts.

Powers of Judge.

Register.

Regulation I of 1802.

Regulation II of 1808.

Assistant Registers.

Ditto.

77. Special powers were then conferred on Registers who had served six years in the judicial line, enabling them to try original suits not exceeding Rs. 1,000, and to hear appeals from the Assistant Registers, Sudder Ameens, and Moonsiffs; their decisions thereon being final, unless under special appeal. Appeals from their decisions in original suits above Rs. 500 went direct to the Sudder Adawlut.

Registers' special powers.

Regulation VI of 1820.

78. In A. D. 1827, the jurisdiction of the Register and Assistant Registers (from that time termed Senior and Junior Assistant Judges) was greatly enhanced; but in 1830, all original jurisdiction was entirely taken away from the European functionaries of every grade, except as to suits in which the Government was a defendant, or any European or American, or any near relative or dependent of a Native judicial servant of any grade, was a party. And by Act XI of 1836, Principal Sudder Ameens and Sudder Ameens were empowered to try suits in which Europeans or Americans were parties. The suits still reserved from cognizance of Natives, are tried by the Assistant Judge, from whose decision an appeal lies to the Judge. If he confirms the decrees, his decision is final; otherwise the case may be further appealed to the Sudder Adawlut.

Changes made by Code of 1827.

Original jurisdiction taken away from European Judges.

79. In the Dekhan, where Natives of rank (Sirdars) are exempted from the jurisdiction of the ordinary courts, the Judge of Poonah, under the title of Agent for Sirdars in the Dekhan, and the Judge

Sirdars' suits in the Dekhan.

of Dharwar, as Agent for Sirdars in the Southern Mahratta country try all cases in which any Native of rank within their respective jurisdictions is defendant. These Sirdars are divided into three classes; and an appeal lies to the Governor in Council, and not to the Sudder Adawlut, in all cases wherein a Sirdar of the two first classes is a party. From decisions in Sirdar-cases by the Assistant Agents, an appeal lies to the Agent in the first instance, and from his decision, a special appeal, either to the Governor in Council, or the Sudder Adawlut, as the case may be.

Criminal suits dicided by European Officers in 1838.

80. The whole number of original suits decided by 6 European functionaries in 1838, was 84, of which 65 were Sirdar-cases: the proportion of the whole number (84) to that decided by Natives is only 1·35 to 1,000. The civil functions of the Zillah Judge are thus, with a trifling exception, confined to deciding ordinary and special appeals from his Assistants, and from the Native tribunals. The Assistant Judges try appeals from the Native functionaries' decisions, as referred to them by the Judge, or filed by themselves if at a detached station.

Present civil functions of Judges and Assistant Judges.

Salaries of European Officers.

81. The salary of every Zillah Judge is Rs. 28,000, except at Surat, where it is Rs. 30,000; that of an Assistant Judge at a detached station is Rs. 14,400; at the Sudder station, Rs. 8,400.

Collectors' courts.

82. By the Code of 1827, civil jurisdiction over a certain class of suits,—those relating to land—was given to the Collectors of Revenue, their Assistants and Head Native Officers; and, by a very wide construction put upon this part of the Code, the entire cognizance of every suit having the most remote connexion with "land," was taken away from the Zillah courts, and transferred to the Collectors. A limit has, however, been put to this very extensive jurisdiction by Act XVI of 1838, and the Revenue Officers are now confined to—

1*st.*—Giving possession of lands, or the like, to any party forcibly dispossessed of the same, if a plaint be preferred within six months of the date of dispossession; and

2*ndly.*—Cognizance of all disputes regarding rent of the current or former years, between ryot and superior holder, which the parties may submit to arbitration of the Revenue Officers.

3*rdly.*—All questions regarding use of wells, tanks, and water-courses, or of roads; and

4*thly.*—All disputes respecting boundaries, such being by the Act still reserved for the Collectors' courts.

83. The civil jurisdiction conferred on the Native judicial servants, was exceedingly limited until 1827; Moonsiffs being only empowered to try suits for Rs. 50,* Sudder Ameens for Rs. 100.† In that year every Native functionary then termed Commissioner, was empowered to decide causes up to Rs. 500, and might have his powers extended to Rs. 5,000. In 1830, original jurisdiction, to an unlimited extent, was conferred on every Native functionary; that of the European Officers being strictly confined to a few special cases already mentioned.

Jurisdiction of Native Judges—

Increased in 1827 to Rs. 500,—

Made unlimited in 1830,—

84. In the following year, however, (1831) this jurisdiction was very much circumscribed; the Principal Sudder Ameens alone being invested with unlimited original jurisdiction,—the power of hearing appeals from decisions of other Native functionaries up to Rs. 100, being also conferred upon them. The jurisdiction of Sudder Ameens was confined to Rs. 10,000; that of Moonsiffs reduced to Rs. 5,000,—the limit fixed by the Code of 1827.

Reduced in 1831.

85. The Native judicial functionaries of the Bombay Presidency have *no* criminal jurisdiction whatever.

They have no criminal jurisdiction.

86. From the Zillah courts, constituted as above, an appeal formerly lay to the Court of Appeal in Guzerat, and from it to the Sudder Adawlut at the Presidency. The Court of Appeal (while in existence) had also jurisdiction for the trial of any original suits referred to it by the Sudder Adawlut, but we have no reason to believe that it was ever called upon to exercise it. In 1820, it was found practicable to abolish the first-named court as an intermediate court of appeal; and though it was judged expedient to re-organize a court of appeal for Guzerat in 1828, it was again, and finally, abolished in 1830.

Court of Appeal—

Had original jurisdiction.

Its abolition.

87. In the Presidency of Bombay, therefore, for the last 22 years, with the exception of a brief interval, the appeal had been immediate from the Zillah courts to the court of highest resort in civil cases.

Direct appeal from Zillah Courts to Sudder Adawlut.

88. The system, which at one time prevailed at the other Presidencies, of vesting in the Governor in Council, the supreme jurisdiction, both civil and criminal, was in force at Bombay so late as A. D. 1820. In that year, on the abolition of the Guzerat Court of Appeal, the Judges of it were constituted the Judges of the Court of Sudder Dewanny

Sudder Adawlut how first constituted.

Re-organized in 1820,

* Regulation VII of 1802.

† Regulation II of 1808.

and Sudder Fouzdaree Adawlut, the Governor and Members of Council being thenceforth relieved from the judicial duties which, as Judges of that court, they had hitherto been required to perform.*

89. The new Court of Sudder Dewanny and Sudder Fouzdaree Adawlut was composed of a Chief and three Puisne Judges; the Puisne Judges being still required to perform their former functions of a Circuit Court, visiting the different Zillahs (the six Coast Districts) then subject to their jurisdiction, delivering the Jails, and generally performing all the duties devolving on a Circuit Court.

Sudder Adawlut re-organized again in 1830.

90. These combined labors of a superior and Circuit Court, having been found too onerous for the Judges of a single court, the Court of Circuit and Appeal was, in 1828, re-organized, but soon abolished as above stated. The duties of a court of Circuit, however, were not again imposed on the Sudder Fouzdaree Adawlut, but, instead thereof, the Zillah Judges were, under the designation of Sessions Judges, invested with the ordinary jurisdiction of a Court of Circuit, as regards the trial of criminal cases; and the three junior Puisne Judges of the Sudder Fouzdaree Adawlut, though still required to perform circuits, were relieved "from holding any but State trials, or any other trials of a peculiar or aggravated nature, which, from any circumstance, Government, on report from the local authority, may wish to be reserved for that purpose." They are only required, on these circuits, to receive petitions, and make a general enquiry into the judicial management of each Zillah visited by the Commissioner.

Puisne Judges perform circuits.

91. The Presidency for this purpose is divided into three circles, which may be termed the Northern, Middle, and Southern; each being visited, once in the year, by one of the Commissioners.

Three Circuits.

92. In order to provide for the due performance of the duties of the Sudder Adawlut, during the absence of the Puisne Judges on these circuits, one of the Members of Council was constituted Chief Judge of the court, as is still the case at Madras; but his functions were expressly limited to attending in court, when a full court of three Judges could not be assembled without his attendance. The Hon'ble Mr. Anderson, in his capacity of Chief Judge, presided at the trial of five causes in the first half of 1840; and this is the only instance we can find, in which the Member of Council has been called in, since his appointment, for this particular duty.

Member of Council made Chief Judge.

[Regulation I of 1830].

Extent of his duties.

* In 1827, the Governor in Council was made a Special Court for trying, in place of the Sudder Adawlut, appeals from decisions passed by the Zillah Judges above the Ghâts as Agents for Sirdars: these functions the Governor in Council still exercises.—(*Vide para.* 79).

93. Neither the Chief, nor senior Puisne Judge, has any superior function, except that of having the casting vote, when the number of voices happens to be equal.

Powers of the Chief and senior Puisne Judge.

94. The Judges, when present at the seat of the court, are occupied in trying appeals, direct from the decisions of Assistant Judges, in cases above Rs. 5,000, and regular and special appeals from the decisions in appeal by the Judges and Assistant Judges, as well as in miscellaneous business. Appeals to the Sudder Dewanny Adawlut are, in the first instance, taken up by a single Judge of the court; and, if he is disposed to concur in the decision of the lower court, his decree, affirming it, is final: but if he sees reason to doubt the correctness of the decision, or finds in the case any point of interest or importance, that has not been yet decided, he refers it to a full court, consisting of three Judges, of whom he may himself be one. In criminal cases, the court has to revise all sentences passed by Sessions Judges for more than seven years' imprisonment, or solitary confinement for six months, and has generally to exercise control over all Zillah Judges and Magistrates.*

Civil duties of the Sudder Adawlut.

Mode in which civil appeals are tried.

Criminal duties of the court.

95. The salary of the senior Puisne Judge has, for some years, been fixed at Rs. 40,000; that of the 2nd, at Rs. 36,000; each of the others, at Rs. 35,000. By very late orders from England, it is understood that the senior, and each of the other Puisne Judges, is hereafter to receive Rs. 42,000 per annum. The three juniors get each Rs. 316 per mensem as travelling allowances in addition.

Salaries of the Judges.

96. The criminal and magisterial powers of the subordinate authorities may be very briefly explained.

Subordinate criminal tribunals.

97. Formerly, each Judge, besides being the criminal Judge, was also the Magistrate of his own Zillah, until 1818, when the duties of Magistrate were transferred to the Collector, except at the Sudder station of each court, which remained subject to the control of the Judge as Magistrate; but, in 1830, the police and magisterial duties of each Sudder station were also transferred to the Collectors, except at the city of Surat where they are still performed by the Judge.

*Criminal Judge was also Magistrate of his District till 1818.*

Collectors now Magistrates.

98. In 1830, the powers of the criminal Judge were increased to those of a Sessions Judge, in which capacity he has to perform all the functions of a Court of Circuit,—trying (with the aid of his

Criminal Judges made Sessions Judges, 1830.

* *Note.*—We observe from the draft of a law lately published, that in civil cases, the same course of procedure is about to be prescribed for the Sudder Courts of the Bengal and Agra Presidencies.

Assistants) all cases involving more than one year's imprisonment; and the number of Zillahs having been reduced to six by placing two Collectorates under the jurisdiction of one court, the Sessions Judge, in four out of the six, has to perform circuit twice a year to the subordinate division of his Zillah, then to deliver the Jail, and generally scrutinize the state of the establishment.

Sessions Judge to perform circuit.

99. The Assistant Judges try criminal cases referred to them by the Sessions Judge (or, at the detached stations, those committed by the Magistrate), having power to sentence to two, or (with special powers) subject to confirmation by the Sessions Judge, to seven, years' imprisonment with hard labor. The Assistant Judges at detached stations have somewhat higher powers, both civil and criminal, than those immediately under the Judge's superintendence; they prepare cases for the Sessions, have charge of the Jail, &c.

Duties of Assistant Judges. Act XIX of 1839.

100. Every Collector, or Sub-Collector, as Magistrate, or Joint-Magistrate, has been, since 1818, vested with the entire magisterial and police duties of his own district, and, since 1830, of the Sudder station also. He has jurisdiction in criminal cases, to the extent of awarding one year's imprisonment, with hard labor and fine. All cases requiring greater punishment than this, he commits for trial to the Sessions Judge. The Assistant Collectors are also Assistant Magistrates. Under the Code of 1827, Magistrates had power to adjude to fine, ordinary imprisonment not exceeding two months, flogging to thirty stripes, and personal restraint. Assistant Collectors were constituted Assistant Magistrates, the Magistrate having power to refer to them any cases within his own cognizance, but with liberty to mitigate or annul any sentences passed by them. By a regulation passed in the same year for the Dekhan, then first brought under the operation of the general regulations for the Presidency, much greater powers than those above stated, were conferred on the Magistrates in that Province, to the extent of two years' imprisonment with hard labor, fine, flogging, and personal restraint. In 1829, the power was given to Government to invest Assistant Magistrates with the same powers. In 1830, these powers were reduced; and those of the Magistrates and Assistant Magistrates in the other parts of the Presidency, were enhanced to one year's imprisonment with hard labor; and this is now everywhere the limit to the Magistrate's penal jurisdiction under Bombay. Sentences exceeding three months' imprisonment, passed by Assistant Magistrates, must be confirmed by the Magistrate.

Collector also Magistrate.

His powers.

Assistant Collectors are Assistant Magistrates.

Ordinary powers of Magistrate.

Special powers of Magistrates in the Dekhan.

Ditto reduced, and made uniform, as everywhere in Bombay.

101. The salaries of the Revenue and Magisterial Departments are as follows:—

| | Per mensem. Rs. | Per annum. Rs. |
|---|---|---|
| Principal Collector of Surat ... ... | 2,666 | 32,000 |
| All other Collectors, and Magistrates ... ... | 2,333 | 28,000 |
| Sub-Collector, and Joint-Magistrate ... ... | 1,400 | 16,800 |
| First Assistants ... ... ... ... | 800 | 9,600 |
| Ditto, Rutnagherry, and Kaira ... ... | 700 | 8,400 |
| Second Assistants ... ... ... ... | 550 | 6,600 |
| Third Assistant Principal Collectors ... ... | 500 | 6,000 |
| Third Assistants ... ... ... ... | 400 | 4,800 |
| Fourth Assistant Principal Collector ... ... | 450 | 5,400 |
| All others ... ... ... ... | 300 to 400 | 3,600 to 4,800 |

102. STATEMENT of causes decided by the courts under the Bombay Presidency, 1838.

| Original Suit. | No. | Balance Depending. | Filed. | Total. | Decided on merits. | Adjusted or withdrawn. | Dismissed. | Total. | Balance. |
|---|---|---|---|---|---|---|---|---|---|
| European Agency. Judges as Agents for Sirdars ... | 2 | 4 | 7 | 11 | 2 | 2 | 1 | 5 | 6 |
| European Agency. Asst. do. ... | 1 | 25 | 52 | 77 | 53 | ... | 7 | 60 | 17 |
| European Agency. Judges ... | 6 | | | | | | | | |
| European Agency. Asst. do. ... | 10 | 14 | 15 | 29 | 10 | 1 | 11 | 22 | 7 |
| European Agency. Total ... | 16 | 43 | 74 | 117 | 65 | 3 | 19 | 87 | 30 |
| Native Agency. Principal Sudder Ameens ... | 6 | 371 | 4,301 | 4,672 | 2,838 | 549 | 703 | 4,090 | 582 |
| Native Agency. Sudder Ameens. | 14 | 841 | 12,504 | 13,345 | 8,177 | 2,597 | 1,699 | 12,473 | 872 |
| Native Agency. Moonsiffs ... | 66 | 3,726 | 46,627 | 50,353 | 27,143 | 12,828 | 5,704 | 45,675 | 4,678 |
| Native Agency. Jahgeerdars ... | not known | 144 | 418 | 562 | 353 | ... | 70 | 423 | 139 |
| Native Agency. Total ... | 86 | 5,082 | 63,850 | 68,932 | 38,511 | 15,974 | 8,176 | 62,661 | 6,271 |
| Grand Total ... | ... | 5,125 | 63,924 | 69,049 | 38,576 | 15,977 | 8,195 | 62,748 | 6,301 |
| Appeals... Agent ... | 2 | 3 | 25 | 28 | 20 | ... | ... | 20 | 8 |
| Appeals... Judges... ... | 6 | 518 | 919 | 1,437 | 1,017 | 51 | 34 | 1,102 | 335 |
| Appeals... Assistant Judges | 10 | 378 | 1,875 | 2,253 | 1,222 | 42 | 75 | 1,339 | 914 |
| Appeals... Principal Sudder Ameens ... | 1 | 11 | 76 | 87 | 81 | 1 | 4 | 86 | 1 |
| Total Subordinate Courts ... | 19 | 910 | 2,895 | 3,805 | 2,340 | 94 | 113 | 2,547 | 1,258 |
| Sudder Adawluts ... | 4 | 116 | 129 | 245 | 143 | ... | ... | 143 | 102 |

103. ABSTRACT of work performed by Judges of the Sudder Dewanny Adawlut, Bombay, 1838.

| | Sitting as single Judge. | | | Sitting in full Court of 3 Judges | Decied by full Court. | | | |
|---|---|---|---|---|---|---|---|---|
| | Confirmed. | Referred. | Total. | | Confirmed. | Amended. | Reversed. | Total |
| Simson ... ... | 15 | 5 | 20 | 57 | | | | |
| Giberne ... ... | 27 | 25 | 52 | 19 | | | | |
| Pyne ... ... | 15 | 30 | 45 | 76 | | | | |
| Greenhill ... ... | 10 | 29 | 39 | 76 | | | | |
| | 67 | 89 | 156 | ... | 19 | 12 | 38 | 69 |
| By the full Court ... | 19 | ... | ... | ... | 19 | ... | 12 | |
| Total confirmed ... | 86 | ... | ... | ... | ... | ... | 50 | |

104. STATEMENT showing the amount of criminal business disposed of by the tribunals under the Bombay Presidency, 1838.

| | | | | |
|---|---|---|---|---|
| Balance of past year with District and Village Officers ... | | | .. ..... | 648 |
| „ „ Magistrates ... ... ... | | | ..... | 300 |
| „ „ Judges ... ... ... ... | | | ..... | 316 |
| | | | | 1,264 |
| Received during the year ... ... ... ... ... | | | ..... | 38,987 |
| | | Total ... | ..... | 39,251 |
| Disposed of { By District and Village Police. } | Acquitted ... ... ... | | 12,301 | |
| | Punished ... ... ... | | 12,939 | |
| | Under Examination ... ... | | 703 | |
| | | | | 25,943 |
| | Transferred to Magistrate ... | | .. ..... | 13,308 |
| By Magistrate { | Acquitted ... ... ... | | 5,818 | |
| | Punished ... ... ... | | 4,200 | |
| | Under Examination ... ... | | 548 | |
| | | | | 10,566 |
| | | | | 2,742 |
| | Transferred to Judge... ... | | ..... | |
| By Judge ... { | Acquitted ... ... ... | | 1,052 | |
| | Punished ... ... ... | | 1,401 | |
| | | | | 2,453 |
| | Under Examination by Judge ... | | ..... | 289 |

| SUDDER FOUZDAREE ADAWLUT. | | | |
|---|---|---|---|
| Number of offenders whose trials referred ... ... ... | ..... | | 272 |
| Sentences confirmed { Death ... ... ... | 22 | | |
| Sentences confirmed { Transportation for life ... ... | 29 | | |
| Sentences confirmed { Imprisonment for life ... ... ... | 6 | | |
| Sentences confirmed { Ditto with fine ... ... ... | 187 | | |
| | | 244 | |
| Acquittals ... ... ... ... ... ... | ..... | | 28 |
| Review of Sentence on Petition ... { Confirmed ... ... | 201 | | 291 |
| Review of Sentence on Petition ... { Mitigated or annulled ... | 90 | | |

105. It will be seen from the foregoing narrative, that the system now in operation for the administration of civil justice in the territories of the Bengal and Bombay Presidencies, and which it is proposed to extend to those of Madras, is based upon the principle of employing Native industry and intelligence in the primary disposal of suits under the safe-guards of an immediate appeal to the European functionaries, and of their constant and vigilant supervision of the general conduct of the Native Judges.

Principle of employing Native agency for the disposal of original suits.

106. To the justice and sound policy of this principle we cordially subscribe; but, in reducing it to practice, an evil of a very serious nature has been incurred, which has already been extensively felt, and which, if not remedied, will greatly impair the judicial administration. We allude to that which has attracted your Lordship's attention—the absence of all previous training in those, to whom, as Judges of first and local appeal, the Government must principally look for the guidance and control of the courts of primary jurisdiction. At present there is not a single situation in the civil branch of the Judicial Department in Bengal open to a Covenanted Servant before his elevation to the important office of Zillah Judge: nor, in Bombay, do the Zillah and Assistant Judges exercise any original jurisdiction before they are invested with appellate jurisdiction.

Absence of judicial training in those destined to become civil Judges of appeal—

107. In the criminal branch, those Civil Servants, who have risen through the grades of Assistant Joint-Magistrate and Magistrate, have the benefit of the knowledge and experience acquired in those offices, when called to exercise the powers of a Sessions Judge; but in Bengal, at least, such a preparation is not considered indispensable, and an officer, conversant only in revenue matters, is equally eligible to that appointment.

And Sessions Judges in some cases.

108. In devising a remedy for this anomalous state of things, we have been led to review generally the principle of admission to the Hon'ble Company's Civil Service, and the educational training, both in England and India, which the persons

Principle of admission to the Company's Civil Service, and educational training of their Civil Servants.

nominated have to undergo before entering upon the active business of life.

Great importance of the subject.

109. Considering the great importance of the duties, which the Civil Servants of the Company are destined to perform in the various branches of our Indian administration, and the extent to which, from the weakness of the Native character, the happiness of the people depends upon the individual dispositions and capacities of the officers placed over them, it will readily be admitted how essential it is to the credit of the Government, and the welfare of the millions committed to their charge, to raise to the utmost the moral and intellectual qualifications of the Covenanted Civil Service. In the depressed condition of the people, caused by the long period of mis-rule and confusion which preceded the establishment of British supremacy in India, the benefits of the strong and settled Government which succeeded, were no doubt sensibly felt; though the instruments employed were but ill-qualified by previous education and pursuits for the discharge of the new duties which devolved upon them. But circumstances are now greatly changed; population has increased; cultivation and trade have extended; European residents are gradually spreading themselves over the country; and the commercial and other transactions of life must be expected to assume a more complex character as society advances in civilization and the elements of it become more mixed. At every step the country takes in the march of general prosperity and improvement, the duties of those employed in its civil administration, become the more delicate and important; and, whilst extensive efforts are making by means of an improved education to raise the qualifications of the Natives of the country for the subordinate situations under Government, it is a matter of paramount importance to exact from those for whom the offices of greater responsibility and control are exclusively reserved, a higher standard of qualification than has yet been required of them.

Suggestions regarding it.

110. In the suggestions which we are about to submit to your Lordship on this subject, we advocate not those measures which abstractedly we should consider the best, but such as we believe will be found the most effectual,—consistently with a due regard to the patronage vested in the Hon'ble East India Company.

Mode of appointment to the Civil Service.

111. We think the first object should be to extend, as far as practicable, the field of selection for the Civil Service, and, by adopting the principle of competition, to secure from among a large body of candidates, a sufficient number of young men possessing superior talents and acquirements.

Same subject continued.

112. With this view, we propose that all nominations by the Directors of the East India Company for each season, should be to the general service, in the first instance; that no person should be eligible for such nomination

before the age of 17; and that all so nominated should be at liberty to enter themselves as candidates for admission to the Civil Service. These candidates should undergo an examination involving a test of high attainments, and, on the required number, declared duly qualified by the result of it, the appointments to the Civil Service should be bestowed according to priority in the examiners' lists. Those nominees who declined to compete, and those who failed in the competition for the civil branch of the Service, would stand appointed to the military branch.

Same subject continued.

113. If this scheme cannot be adopted in its fullest extent, we recommend as near an approach to it as may be found practicable, and that at all events the principle of competition be preserved.

Education in England of the Civil Servants.

114. The appointments to the Civil Service having been thus settled on the principle of superior attainments, we propose that the nominees should continue in England three years, for the purpose of further qualifying themselves for the higher stations they are destined to fill. We have fixed on 17 as the age at which school education is usually completed, and the student is prepared to profit by an advanced course of study in science and general knowledge. The additional three years make 20 the minimum age at which a Civil Servant would quit England for India,—which we think a preferable minimum to that now established.

Same subject continued.

115. The course of study to which the Civil Servants should devote themselves during the remainder of their stay in England, is, in our opinion, History in general, and the History of India in particular; Political Economy; Moral and Political Philosophy; and Jurisprudence,—especially that branch of it, which relates to the conflict of laws. It would be advisable that a syllabus of these subjects should be prepared, in which the best sources of information should be pointed out.

Same subject continued.

116. The progress of the students in these departments of knowledge should be ascertained by annual examinations, and the examiners should have full authority to reject, at the final examination, any one whose attainments did not reach a certain fixed standard, or whose general conduct and character were found to be unsatisfactory.

Same subject continued.

117. It would, of course, be essential to the success of this plan, that the standard of qualification should be rigidly adhered to, and that the Board of Examiners should be so constituted as to command the confidence of all, and secure the support of public opinion in the firm and upright discharge of their duty.

Same subject continued.

118. We do not attach importance to the study of the Oriental languages in England, beyond such an elementary acquaintance with them as would accelerate future proficiency in India. It is in the latter country, that

the greatest facilities for acquiring this description of knowledge exist; and we think the principal part of the time spent in England, would be most profitably devoted to the pursuit of European literature and science. Considering, also, the very limited means of instruction in the Oriental languages available in England, the establishment even of a low Oriental test might interfere with the principle, which we suppose will be acted upon, of allowing the Civil Servants to choose their own plans and places of instruction.

Education in India of the Civil Servants.

119. On their arrival in India, the attention of the Civil Servants should be principally directed to the study of the vernacular languages, proficiency in two of which should be required of them.

Same subject continued.

120. Their professional studies should now assume a local character. Means should be afforded them of acquiring a knowledge of the system of the internal administration of the country, and of the principles of law and equity which have regulated the decisions of the Indian courts. For this purpose, the regulations enacted for the particular Presidency, the printed reports of cases decided by Her Majesty's and the Company's superior courts, and the most useful portions of the Hindoo and Mahomedan Laws which have been rendered accessible to the English student by translations and treatises, should be made the subjects of lectures. And, as a means of obtaining some practical knowledge of the administration of justice, the student should be required, at convenient times, to attend the trials, civil and criminal, in the Queen's courts of judicature. The courts we are recommending for the trial of the matters which are now brought before the Supreme Courts in civil actions at law, as well as the subordinate criminal courts proposed on a former occasion, would also be available for this purpose, perhaps with even greater advantage than the Supreme Courts, with reference to their more simple course of procedure.

Same subject continued.

121. Periodical examinations should be held for the purpose of ascertaining the progress made in these various branches of study; and, on a Civil Servant passing a certain test, he should be declared qualified to take a part in public business.

Training of the Civil Servants on being reported qualified to take a part in public business.

122. In this stage of his noviciate, we think it very desirable that he should be afforded the best opportunities of perfecting himself in the languages, and acquiring a general knowledge of the manners, habits, feelings, and institutions of the people.

Same subject continued.

123. In our courts of justice, the Native character is seen in its worst aspect; and the unfavorable impressions which the mind of the young Civilian receives from this partial view, is too apt to have a prejudicial influence upon the whole tenor of his future conduct. On the

other hand, first impressions drawn from intercourse with the respectable classes, and a more general survey of the people in their ordinary intercourse with each other, would lay the foundation for a kindliness of feeling towards them, and a reasonable consideration for their prejudices and failings.

Same subject continued.

124. It is chiefly at the beginning of his career, and whilst holding a subordinate situation, that the Civil Servant will find time for the prosecution of general enquiries, and the greatest readiness on the part of the Native to communicate their sentiments. The possession of superior office is at all times an obstacle to free communication with the people; nor would we advocate in the higher judicial functionary that familiarity of intercourse which would be useful and proper in the officers of revenue.

Same subject continued.

125. To the acquisition of this description of knowledge, the Revenue systems of Madras and Bombay are peculiarly favorable. There the annually recurring Ryotwarry settlements require a constant and local intercourse between the revenue officers of Government and the agricultural inbabitants; and the minute information respecting the interests of the different classes of the village communities, the various rights in land, and the instruments by which those rights are modified or transferred, necessarily acquired in the course of such detailed arrangements, cannot but prove valuable to the future judicial officer.

Same subject continued.

126. We would, therefore, recommend for those Presidencies, that the Civil Servants, on being reported qualified to take a part in public business, should be attached as Assistants to Collectors and Magistrates for the period of three years. That is, we would continue the initiatory system now in force there, which was introduced during the Governments of Sir Thomas Munro and Mr. Elphinstone.

Same subject continued.

127. Regarding the junior Civil Servants on the Bengal Establishment, we find it more difficult to come to any decided opinion. The detailed village settlements, which have been for some years in progress in the Western Provinces and Cuttack, and partially in Bengal, Behar and Benares, afford perhaps even better opportunities of acquiring practical information than the ordinary revenue arrangements of Madras and Bombay. But these settlements are now drawing to a close, and we understand that in about two years the whole will be completed either in perpetuity, or for terms of 25 or 30 years. The principal business of the revenue officers will then be reduced to the simple duty of collecting the revenue, and making the usual arrangements in the Departments of Abkaree and Stamps; and it is only the occasional failure of a settlement, or the management of a few estates under the superintendence of the Court of Wards, which would call for local and minute investigation. To a knowledge of

the mere routine of a Bengal Collector's office, as conducted at the Sudder station, we attach no importance as a preparation for judicial duties.

Same subject continued.

128. Where the charge of the police is also vested in the Collector of revenue (as is universally the case at Madras and Bombay), the occasional deputation of the Assistant into the interior, for the purpose of local enquiries, would give opportunity for acquiring information, and would operate as a check on the Native officers of police. But we believe that in most districts of the Lower Provinces of the Bengal Presidency, the functions of revenue and police are committed to distinct officers, and the same Assistant could not work satisfactorily under two superiors.

129. If sufficient employment could be found for the junior Civil Servants of this Presidency, of a nature calculated to store their minds with that general practical knowledge which we think so desirable an acquisition, we would recommend the same disposition of them, during the three years, as at the other two Presidencies; otherwise we would at once commence with those selected for the judicial line, the peculiar training to which we shall presently advert, and continue it for a period of three years.

Subsequent selection for the judicial line.

130. On the expiration of the three years of Mofussil preparation, we would choose the ablest and most competent of the Civil Servants, for employment in the judicial line; and as we propose that all so chosen should thereafter be confined exclusively to that line, we would, in making the selection, consult individual inclination as far as the exigencies of the service permitted.

Same subject continued.

131. We have not fixed upon an earlier stage in the Civil Servant's career as the period of selection, because it appeared to us important that it should be deferred to as late a period as possible, consistently with other considerations, to allow of the fullest development of those qualifications, which should guide the Government in the distribution of its agency.

Why legal instruction important for Civil Servants eventually attached to the Revenue Department.

132. The legal part of the education, which we have proposed for the Civil Servants in England, and on their first arrival in this country, may be thought unnecessary for those who are eventually attached to the revenue branch of the administration; but when we consider the important functions partaking often of a judicial character, which such officers, as they advance in the service, are called upon to perform, and the numerous instances in which they act as the legal advisers of Government, we think the accurate acquaintance with the principles of right and wrong, and the general knowledge of the laws of the country to which such a course of study must lead, will be found of essential advantage to them.

133. For the Civil Servants, who, after three years of revenue practice, are set apart for the judicial branch, we would recommend, at least, one year of judicial apprenticeship previous to their appointment to the excercise of independent functions.

Special training for the Judicial Servants.

134. We beg to draw your Lordship's attention to a minute recorded by Mr. Cameron, when officiating as fourth Ordinary Member of the Council of India, on the subject of judicial training, copy of which, and of the letter to Lord Goderich, therein referred to, is appended to this address. The minute has special reference to the judicial training of Natives, but the principle is equally applicable to our purpose, except that in the case of English gentlemen the defect of moral principle, insisted on in the letter to Lord Goderich, does not exist. The mode proposed by Mr. Cameron, of constituting the court's schools for judicature, appears to all of us unexceptionable, and we recommend that every Civil Servant, on his first appointment to the judicial line, should be attached as an Official Assessor to a Mofussil court superintended by a Covenanted European Judge, or to the civil and criminal courts subordinate to the Supreme Court, which we contemplate for each Presidency.

Same subject continued.

135. It is not necessary that in this capacity his time should be exclusively occupied in assisting at the civil and criminal trials in court. There are ministerial duties now left principally to the Native officers of the courts, in the superintendence of which he might be beneficially employed; and we also think it very desirable that he should be occasionally deputed for the purpose of conducting local investigations connected with cases depending before the Judge.

Same subject continued.

136. Mr. Cameron dissents from the recommendation that the Civil Servants, intended for the judicial line, should pass the first three years of their noviciate in the Revenue Department, and has thought it right to state his view in a separate minute.

Mr. Cameron's dissent from the recommendation of his colleagues respecting the training of the Judicial Servants.

137. To the majority of the Commissioners, it appears that by such employment in the Revenue Department as they contemplate, a young man would acquire a better command of the Native languages, which he must of necessity be continually using, than if he were occupied during the same time in the duty of an Assessor to a court without any obligation, or having any need to take an active part in the proceedings as an interlocutor. It appears to them, also, that a man, whose duties have brought him into contact with people of all classes, and have afforded him opportunities of making himself acquainted with their manners and habits, their ways and forms of dealing, and intercourse with each other, and the details of their economy generally; who has conversed with them freely, and is used to hear

View of the majority of the Commissioners.

them speak without reserve; is likely to be better able to deal with a witness so as to elicit the truth from him, and to know when he has got the truth; better able to estimate the value of Native documents exhibited in evidence, and to understand the merits of causes turning upon the ordinary transactions and dealings of Natives among themselves; better able, therefore, in general, to perform the office of a Judge, than one of the same standing, who has had no opportunities of becoming acquainted with the character of the Natives, except as it has been exhibited by those, whom he has had to do with, only as adverse litigants, or as tutored witnesses, although by his practice in judicial business, he may have become better versed in jurisprudence, and more expert in applying its principles and rules.

Same subject continued.

138. They do not apprehend, however, that a young man well grounded in jurisprudence by the education proposed to be given him in England, and having in view to attach himself eventually to the judicial line, and being of an age at which he may be expected to have attained some stability of character, would altogether neglect this science during his temporary employment in active duties in other branches of the Service. They would expect him rather to prosecute the study, and to improve his theoretical knowledge whilst laying up a store of information and experience, which must be of the greatest service to him when he is called upon to apply that knowledge practically in the discharge of judicial functions.

On the completion of their probationary course, the judicial Servants to be appointed Judges of courts of original jurisdiction, thence to rise to the office of Zillah Judge, and afterwards to be eligible, according to merit, to the situation of Sudder Judge.

139. On the completion of the last stage of his probationary course, the Civil Servant should be eligible to the office of Judge of a court of primary jurisdiction, from which he should be promoted in his turn to the situation of Zillah Judge of appeal; and from the most distinguished of the officers of this grade the Judges of the Sudder Courts should be selected. The number of courts of original jurisdiction to be reserved, according to this plan, for the Covenanted Officers, should, as far as practicable, be so regulated as to insure to each three years' experience in the trial of original suits before his promotion to be a Zillah Judge.

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Note.—We have adverted, in two previous notes, to the manner in which the institutions which we contemplate for the improvement of the English portion of Indian judicature, may be made conducive to the judicial education of the young Civil Servants. The subordinate civil courts will consist of several Judges with various degrees of knowledge, and various amounts of salary. They will have to administer English Law, Hindoo Law, and Mahommedan Law. The chief of each court will distribute the suits among himself and his colleagues (after the plaint has disclosed the nature of each suit) according to the qualifications of each. Now we think that when this court shall be established, young Civil Servants, before they are sent to administer justice in the Mofussil, might officiate as inferior Judges. None but the most simple suits would be confided to them, in the beginning of their career, by the chief of the court; none but such suits as, according to the theory of the present system, are intended to be brought before the Court of Requests. There are provisions in our scheme for the transfer of suits to Judges of higher qualifications, if unexpected difficulties should emerge in the course of their investigation. The young Civil Servant will thus exercise the judicial function in such a manner, that his mistakes may be prevented by the transfer of the suit, or by consultation with his superiors, or may be set right by an imme-

140. By thus securing to the Civil Servants destined eventually to superintend and control the Native judicatories, an appropriate training in the first place, and afterwards a due degree of experience in the administration of justice in courts of primary jurisdiction, we think a sufficient remedy will be provided for the great defect which we noticed, as attaching to the present judicial systems of Bengal and Bombay. And with the full information which we have obtained in the course of our present consideration of this subject, we would wish to modify, on the same principle, the recommendation we submitted in a late report on the proposed change in the judicial establishments at Madras, to the effect that all original jurisdiction should be left eventually in the hands of the Native Judges.

Modification of a recommendation connected with this subject in a former report.

141. In order that those who have once become attached to the Judicial Department, may have no cause for disappointment, with reference to the pecuniary advantages of other lines, the emoluments of it should be so adjusted as to render it, on the whole, the most lucrative branch of the Service.

Emoluments of the judicial branch of the service.

142. Having thus submitted to your Lordship the suggestions which have occurred to us on the first topic proposed for consideration, we proceed to the second, *viz.*, the expediency of appointing a Chief Judge with superior emoluments to each of the Supreme Native Courts.

Expediency of appointing a Chief Judge to each Sudder Court.

143. In England, the Judges of the superior courts sit together in the presence of a numerous bar and a large concourse of spectators. In those courts, there are numerous occasions, besides the pronouncing of decisions, on which it is fitting that only a single authority should speak in the name of the court. On all such occasions, it is desirable that what is delivered should be expressed with propriety and dignity of language and manner, and, not merely that, it should be unobjectionable in substance. There are also many occasions in which decisions are pronounced, where, if the Chief Justice delivers his opinion on the law or facts correctly, and in a luminous manner, the Judges, who follow, will be shorter in the exposition of their own views, and will frequently do no more than express a simple assent. In this manner a great deal of time is saved to courts. In England, also, the Chief Justices have in charge the *nisi prius* sittings at Westminster and London (including most of the great mercantile causes), in addition to their share of Assize business. This is, perhaps, the most difficult duty discharged by the English Judges. It may be added that, until very recently, the Chief Baron of the Exchequer discharged alone a

Reasons for appointment of Chief Justices in England.

diate appeal on the spot. He will exercise his function under the eye of the College of Justice and the Government, and in the presence of the watchful, and not very submissive, public of the capital. He will acquire habits of attention and method, and the art of weighing evidence and of separating law from fact.

large equitable jurisdiction. He at present tries all the revenue jury cases. The Chief Justice of the Queen's Bench is Coroner of England. The Chief Justices are usually appointed to the Privy Council: and more than one of them are commonly promoted to the House of Lords, where their services have often been of great utility upon judicial appeals, as well as other legal matters. The present Chief Justice, it is believed, exercises particular functions in conducting the business of the House of Lords. The Chief Justices are, moreover, entrusted with various *ex-officio* duties of minor importance, including the appointment to several subordinate offices.

Qualifications for those offices, and selection for them.

144. As the occupation of Chief Justices in England requires, rather than that of Puisne Judges, powers of communicating their sentiments with impressive effect in the presence of a public audience, whilst the most valuable qualifications of Puisne Judges are frequently not combined in any high degree with that of eloquence; so, in England, there is no difficulty in selecting for the one or other station. The Attorney-General usually succeeds to any vacant Chief Justiceship. The Attorney-General will commonly be a person competent to take a part in the debates of the House of Commons—at all events he will generally have acquired distinction as a leader of causes. The talents of a leader of causes, and those of a learned and sensible junior, who, possibly, would be very incompetent to address a jury with effect, but the value of whose legal opinions was generally appreciated, will often indicate the proper person to be selected, with a view to a Chief Justiceship or Puisne Judgeship. The promotion of a Puisne Judge to a Chief Justiceship is unusual; and, if it were common, it might tend to shake the public opinion in the independence of the Puisne Judges. It often happens, in England, that the Puisne Judges of a court have, in many trials at *nisi prius*, acted under the control and directions of the Chief Justice as their leader.

Contrast of circumstances in India, as affecting the Sudder Courts,—

145. In India, none of these circumstances exist to affect the constitution of the Company's Supreme Courts. The functions of the Sudder Judges are confined to the judicial business before their courts. In Bengal and Bombay, the greatest part of the civil business of these courts is disposed of by the Judges sitting singly. In the Sudder Court at Calcutta, about two-thirds of the civil suits are thus disposed of; and in that of Bombay, about one-half; and the same might take place at Madras under the existing law. The number of intelligent practitioners is very small; and we believe the audience, generally speaking, consists of little more than the parties interested, or their agents and authorized pleaders, and other parties or their agents awaiting the trial of their own suits.

And the appointment of the Indian Judges.

146. Nor do the circumstances of the two countries differ less with regard to the mode in which the Judges are appointed. The sphere of selection for the highest judicial offices under the Company's control is limited to the Civil Service, in which promotion is re-

gulated on the principle of seniority as the general rule. It is seldom that very superior qualifications are to be found in any particular Judge, which would render his elevation to an eminent position in the court conducive to its greater respectability, and the improvement of the administration of justice; whilst from the peculiar nature of the Civil Service, selection according to individual merit, unless that merit is generally acknowledged, has been found to create dissatisfaction. Indeed, it was an inconvenience of this description which induced the Government of Bengal, in 1829, to abolish the distinctive appellation of the Judges of the Sudder Court; and as the duties of all the Sudder Judges are essentially the same, there does not appear to be any sufficient reason, while the constitution of the Sudder Court remains in other respects unaltered, for re-establishing the distinction of rank and emolument that formerly prevailed.

Proposed College of Justice.

147. The highest Courts in the country which we shall recommend (and which, for the sake of distinguishing them from the present Supreme Courts, we propose to call the Colleges of Justice) will consist of the Judges of the Supreme Court and the Judges of the Sudder Courts. The Chief Justice of the Supreme Court will become the Chief of the College of Justice.

Same subject continued.

148. Should our recommendation on this subject meet with the approval of the Government of India, the Chief Justice, as President of the College, will be invested with certain powers of superintendence and direction, which would give consistency to its proceedings; whilst the combination of the knowledge and experience of the English and Indian Judges would tend greatly to improve the practice of the courts, and generally to raise the standard of the judicial administration.

Same subject continued.

149. We admit that the appointment of English lawyers to preside over courts which are to superintend all the judicial establishments, is not unattended with risk; but we think taht, upon the whole, it is preferable to the appointment of judicial Servants of the Company; for, we think it more probable, in these days, that an English lawyer may be found free from the narrow prejudices which his professional education has, it may be admitted, a tendency to create, than that a judicial Servant of the Company should be found with a mind sufficiently disciplined in the principles and distinctions of jurisprudence to watch effectully over the whole administration of justice.

Expediency of investing the Sudder Courts with original jurisdiction.

150. The last subject is the expediency of investing the Sudder Courts with a limited extent of original jurisdiction.

Reasons against such a measure.

151. To this measure, we think, there are, under present circumstances, serious objections. We consider the great object of the Sudder Courts to be to fix and maintain right principles, to preserve

uniformity in the administration of the law, and to exercise a general supervision and control over all the inferior courts. The system of special appeals, which we have recommended in our report of the 4th December 1841, for the better attainment of this object, would throw open the Sudder Courts to a large class of appeals now altogether excluded from them; and we believe the present number of Judges would not be found more than sufficient to the despatch of the business so increased, even under the modification of the present practice of trying special appeals, which we have suggested in the same report.

Same subject continued.

152. We entirely agree with your Lordship that "no man can be capable of appreciating the value of evidence, who has never heard a witness examined, and who is not well acquainted with the mode of conducting causes in courts of justice, and generally with the national character as well as the national languages; for, upon the value of such evidence and such knowledge of character and of language, the decision must in most cases depend."

Same subject continued.

153. In most cases the decision must depend upon these things, but not in all; and even in those cases in which it does depend upon these things, it does not depend upon these things only. In many cases it depends, wholly or in part, upon a correct knowledge of the principles of law or jurisprudence, upon the habit of applying these principles to the facts which evidence establishes, upon the habit of eliciting from the evidence (assuming it to be credible) the facts which form a proper basis for the application of the principles of law or jurisprudence.

Same subject continued.

154. We now take the liberty of observing that this knowledge and these habits are what are specially requisite in an appellate Judge. We admit that no man ought to be appointed an appellate Judge, who has not acquired practical skill in the decision of original suits.

Same subject continued.

155. We admit, also, that if considerations of economy do not forbid, the practical skill thus acquired by the appellate Judge, might with advantage be kept up by the occasional exercise of original jurisdiction, while the ordinary Judges of first instance would derive benefit from the model thus exhibited to their observation.

Same subject continued.

156. But we hold that, as the qualities most essential in an appellate Judge are not likely to be found united to an intimate acquaintance with the national character and the national languages, it will be expedient to have some Judges in the appellate court whose unacquaintance with the national character and languages must be excused on account of that knowledge of law and jurisprudence, and of those judicial habits which, at present at least, can be most effectually acquired in courts of English judicature.

157. There are three functions, as it seems to us, which an appellate court may perform, though it does not follow that every appellate court performs all the three. First, to say whether the evidence appears to have been properly taken and properly appreciated by the court below; if not, the course is to have it investigated afresh either by the same or another court of original jurisdiction.

Functions of an appellate court.

158. The appellate court ought never, we think, to set up its own opinion in opposition to that of the court which heard the witnesses give their evidence, further than to order a fresh investigation; but it may, upon reasonable grounds of doubt, order that the same inferior court, or another, should hear the witnesses over again, or merely that the inferior court should re-consider its finding.

Same subject continued.

159. The only one of those three courses known in English practice is the second. Upon a motion for a new trial upon the ground that the case has not been properly investigated by the Judge and jury at *nisi prius*, the court, if it assents to the grounds of the motion, orders that the case shall be investigated again by another jury. The evanescent nature of a jury makes it impossible to direct that the same jury should either re-consider its finding, or investigate the case afresh.

Same subject continued.

160. In the Supreme Courts of India, there being no trials at *nisi prius*, and no jury in civil cases, the analogy of English practice is preserved, as far as those important differences permit, by the court which first tried the cause ordering a new trial before itself—a proceeding which seems to be recommended by nothing but the preservation (little more than nominal) of the above-mentioned analogy.

Same subject continued.

161. Secondly, the appellate court has to say whether the facts* of the case have been correctly elicited from the evidence (assuming the inferior Judge's opinion of the credibility of the evidence to be correct). If it thinks they have not, it should correct the error itself. This is what is done in English practice upon a demurrer to evidence.

Same subject continued.

162. Lastly, the appellate court has to say whether the court below has correctly applied the law to the facts. Here, again, if it thinks the court below has erred, it sets right the error without any further enquiry.

Same subject continued.

163. If this is a correct account of appellate judicature, the appreciation of testimony from the national character and the demeanor of witnesses is no part of it, though we do not deny that an appellate Judge, who is capable of such appreciation, would bring to the decision of questions of law more of the desired acuteness of mind and perspicuity of judgment than one who has not that advantage.

* It is not everything called a fact in common speech that is a fact for this purpose. "Factum vocamus omnem eventum qui ad jura vel constituenda, vel immutanda, vel tollenda valeat." —Muhlenbruch Doctina Pandectainge, I, 173.

164. In conclusion, we beg to apprize your Lordship that the question of the best mode of training the junior Civil Servants in the judicial Department was referred to us by order of the Hon'ble the President in Council, in August* 1838, to be considered in connection with the general system of judicial procedure; and as this address contains all that has occurred to us on the subject, we take the liberty of requesting your Lordship's permission to submit a copy of it to the Hon'ble the President in Council, as a formal reply to the official communications adverted to.

Commissioners request permission to submit a copy of this address to the Hon'ble the President in Council in reply to official reference on the subject of the judicial training of the junior Civil Servants.

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*Minute by the* HON'BLE MR. CAMERON *on the means of educating for judicial functions.*

The Committee of Public Instruction suggest, as the best mode of supplying the want of official knowledge as well in the young men educated at the public seminaries as in others, that "a certain number (say five) of Native Assistants on small salaries should be appointed to each district, three of whom might be placed at the disposal of the Judge, and two under the orders of the Revenue Commissioner, the latter being available for employment in any district of the Division at the discretion of that officer. The three attached to the Judge might 'be posted," the Committee proceed to suggest, "according to his judgment either in his own court or that of the Principal Sudder Ameen, where they would be very useful, after a short time, as confidential clerks, and they would obtain the very best practical education especially as to details and forms for Moonsiffs."

Having myself on a former occasion been obliged to give much of my attention to the subject of preparing Natives of the East for the judicial office by appropriate moral, and intellectual culture, I am desirous of now stating the opinion at which I arrived; and for this purpose these papers have, at my request, been transferred to the Legislative Department.

The occasion which attracted my attention to the subject, was the preparation of a plan for judicial establishments for the Island of Ceylon, which was part of my duty as a Commissioner of Eastern Enquiry under the Colonial Office.

As the least troublesome mode of explaining my views, I annex the letter to Lord Goderich, in which I proposed that in every court of original jurisdiction there should be a paid and permanent officer, assisting the Judge throughout the conduct of the cause, and giving his opinion upon every matter arising for decision, which opinion, however, should have no legal effect, and indeed no other effect than such moral influence as the learning and character of the officer delivering

* Mr. Officiating Secretary Maddock's letter, No. 282, dated 13th August 1838, and No. 295, dated 20th idem.

it, and the arguments by which he might support it, should produce upon the mind of the Judge.

This proposition received the assent of the Secretary of State for the Colonies, and the plan has been gradually brought into operation at Ceylon. It is there connected with the plan of Assessors which I had previously recommended; but there is, of course, no necessary connection between them. A paid and permanent officer, with the proposed functions, might sit in every court, though no unpaid and unofficial colleagues were associated with him.

To the reasons adduced in my letter to Lord Goderich, I have now only to add some remarks upon the merits of the plan as compared with other plans which have been proposed or adopted for the attainment of the same end.

I am only aware of three such plans:—

1*st*.—The plan of appointing the probationer to a clerkship or other office in a court of justice.

2*nd*.—The plan of appointing the probationer a Judge for the decision of small causes.

3*rd*.—The plan of appointing the probationer to take the evidence upon which the Judge is afterwards to decide.

I.—The first is the plan which forms part of the recommendation of the Committee of Public Instruction, and it is, I think, much to be preferred to the other two. But it is liable to objections which do not apply to my proposition, and which, in my judgment, far out-weigh the small advantage which I admit it to possess in point of economy. For, a person employed as a clerk or other officer of court, though he does, indeed, witness with more or less attention the transaction of judicial business, does not himself transact it. The process necessary for coming to a correct decision, the process necessary for making a decree, does not pass through his mind. He does not acquire actual experience of that duty for which it was intended to fit him.

II.—In the second plan, the probationer (if it be not abuse of language to call him so), whose business it is to hear and decide small causes, does indeed acquire actual experience; but he acquires it at the expense of the unfortunate suitors, on whom his education inflicts all the misery resulting not only from injustice, but from injustice aggravated by the fallacious promise of justice. Moreover, as small causes are generally the causes of the poor, and large causes are generally the causes of the rich, the unseemly spectacle is exhibited of a Judge learning to adjudicate *well* the rights of the great and opulent by adjudicating *well or ill* the rights of the vulgar.

III.—The third plan, that of making the probationer (if here again it be not an abuse of language to call him so) take evidence upon which the Judge is afterwards to decide, is open to the objections which have been stated against both the others. It is not,

indeed, open to these objections in so great a degree as each is respectively to its own share of them; but it is liable to another of very great weight, *viz.*, that it separates two functions,—those of hearing and deciding,—the union of which is essential to the best constitution of a court.

The arrangement, which this plan suggests, for educating men to the administration of justice, is such that under it the administration of justice must be defective, even though performed by the best educated men. In the plan which I propose, there is no such injurious distribution of the functions of hearing and deciding.

In that plan, the probationer actually transacts judicial business himself. He actually performs every office which he would perform if he were a Judge, not even excepting the office of deciding; but his decision can do no harm. He gets all the benefits of real experience without inflicting upon the suitors any of those evils to which judicial inexperience gives rise.

I have now only a few words to say on the economical part of the subject. I must candidly admit that the plan I propose is more expensive than any of its three competitors; for, in all of them, the probationer, though paid by the public, is not paid for learning the business of a Judge, but for some service which must at any rate be performed, and for the performance of which the public must at any rate pay.

I submit, however, that if my reasonings are sound, the expense of training Judges in the manner I suggest, will be far more than re-paid by the advantage of placing on every bench a man who begins his judicial career with a thorough practical knowledge of his duty. Of course, during the illness or temporary absence of the Judge, the probationer will be generally competent to transact any business of routine.

The expense, too, of training Judges in this manner will be really much less than it may appear at first sight. It will probably become still less as the plan works and becomes understood. It may perhaps vanish altogether in the course of a few years; for, independently of any salary which may be paid to the probationer, he will have a strong temptation to accept the office in the promise which should be made to him, that nothing but some moral or intellectual defect will prevent his being in due time promoted to the bench.

That such a promise will operate as a very strong inducement is made certain by experience. In England, young men are tempted by the very uncertain chance of success at the bar, not only to do gratuitously the work of other men, but pay 100 guineas a year during two or three years for the privilege of being allowed to do it.

Now, though it is probable that the candidates for the office of Moonsiff will be too poor to pay for the instruction to be thus afforded, or even to subsist without some salary, it is, I think, clear that a very small salary, indeed, will be sufficient from the first, and perhaps none

at all hereafter will be necessary. The functions of the probationer are not such as to require that he should be well paid as a security against bribery ; it can be worth no man's while to offer him a bribe.

It is to be observed, besides, that although my plan requires an immediate expenditure of money, which the others do not, it will appear upon examination that this expenditure is not all to be placed to the account of judicial training. I expect from the adoption of the plan a further collateral advantage,—itself worth some pecuniary sacrifice. It seems to me that we shall have what is good in a plurality of Judges, while we avoid what is evil in that arrangement.

A plurality of Judges is mischievous, because the disadvantage of dividing and weakening responsibility out-weighs the benefit resulting from the joint application of several minds to the same subject.

There will be two minds applied impartially to the examination and discussion of each cause, while the legal responsibility of the decision is concentrated upon one.

The probationer, upon this plan, may be regarded in some respect as an advocate, only that, instead of being the advocate of a party, exercising his ingenuity in one out of two cases to mislead the court, he will be the advocate of truth and justice, stimulated by the hope of promotion to the bench, to do his utmost for the interest of those his clients.

Two objections have been suggested to me, which are certainly deserving of notice—

*First*, it may be objected that each suit will consume more time than it now does.

Each suit ill certainly consume more time than it now does ; but, before we can pronounce this to be an evil, we must know whether the time now consumed is sufficient for a thorough investigation of the case.

It seems to me that a Judge, sitting without colleagues, without jury or assessors, and without any effective public, is likely to be in too great a hurry. He has scarcely any adequate motive for stating to himself distinctly the grounds of the opinion which the evidence and arguments may impress upon his mind. A Judge so situated must be apt to decide, without any separation of law from fact, of the sound argument from the sophistry which may have been addressed to him, and of the trustworthy from the suspected evidence which may have been adduced.

He must, I think, be prone to make up his mind upon the whole matter in the gross, just as an unpractised man makes up his mind in common life when two conflicting stories are told him ; and seeing, or thinking he sees, that one of the contending parties is right, and the other wrong, he pronounces accordingly.

This is not the proper mode of arriving at any decision, least of all a judicial decision, which ought to show what propositions the Judge assumes as law, and what propositions of fact he considers to

be established ; and I am, therefore, of opinion that time, which will be for the most part employed on the analysis above mentioned, (as will probably be the case when two men have to record their joint opinions upon a complicated matter which they have examined together), is, upon the whole, time well spent, even though some of it may be consumed in superfluous discussions.

The *second* objection is, that the responsibility of the Judge will be divided, and thus weakened. As the opinion of the probationer will have no legal effect, the legal responsibility will not be divided. His moral responsibility will, however, be in a slight degree shared by the probationer, and in that respect weakened ; but, on the other hand, both his legal and moral responsibility will be strengthened, because his decision will be so much more open to criticism when the steps by which he arrives at it are thus laid open.

Before I conclude, it may be proper to say a few words upon the mode adopted in Great Britain for selecting persons for a judicial office.

The Judges are there invariably selected from among practitioners at the bar; but justice is there administered under circumstances so very favorable to the purity and learning both of the bar and the bench, that however excellent the Judges may have generally been, who have gone through this kind of training for their office, much of their excellence cannot, I think, be attributed to that training. It is rather to political and social, than to professional causes, that the lawyers of the mother country owe their freedom from pecuniary corruption ; and with regard to intellectual qualities, those which insure success to the advocate who is maintaining one side of the question, are by no means the best calculated to insure a just discrimination of the merits of both sides.

Eloquence, skill in cross-examination, and readiness in taking advantage of any real or seeming flaw in the adversary's case, are indeed qualities which are capable of a beneficent application. But they are exerted at the bar avowedly and systematically without reference to the merits of the case.

Even thus exerted, they do not fail to produce some good, but that is because they are generally to be found arrayed in something approaching to an equal degree both on the part of the plaintiff and defendant.

But it cannot be doubted that they are calculated to engender a habit of mind, the reverse of what is desirable in a Judge—a habit of mind which the advocate must throw off before he can satisfactorily perform the nobler duties of the bench.

It is not necessary that I should go into a more elaborate examination of this part of the subject, as for a long time to come it is very unlikely that the bar of the Mofussil courts should be so

much improved as to be thought advantageous seminaries for the education of Judges, even by those who are disposed to attribute more merit than I do to the system of the mother country.

Since writing the above, I have referred to M. Dumont's work, De l'organization Judiciaire, Chapter XI., of which I had only a general recollection; and there I find that the plan of training Judges, which received the sanction of Mr. Bentham's high authority, is that there should be a Judge Delegate in each court, to whom the principal Judge should refer such causes as he thinks fit.

It is not said how the principal Judge is to distinguish the causes which he selects for reference to his delegate. Probably Mr. Bentham intended that the causes should not be selected until the pleading is completed, and the matter ripe for argument on trial.

This plan is open, in a slight degree, to the objections I have urged against the second and third of the plans examined above, and would, I fear, have a great tendency in this country to degenerate into the second plan, and therefore, notwithstanding the great name of the inventor and the merit of the invention, I still venture to prefer my own.

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*From* CHARLES HAY CAMERON, ESQ., *to the* RIGHT HON'BLE VISCOUNT GODERICH,—*dated, Chester Street, 10th August* 1832.

In the report I had the honor to address to your Lordship on the 31st January last, I recommended that each court of original jurisdiction in Ceylon should consist of one Judge and three Assessors, and that the Assessors should be chosen as the Jurymen now are in the Maritime Provinces.—p. 78, Ceylon Reports.*

I stated to your Lordship at some length in that report the reasons which appeared to me to justify the scheme of judicature described in it. But it has since occurred to me that, by a slight modification, that scheme may be made subservient to the very important and beneficial purpose of giving to a class of Native functionaries the skill and integrity necessary to render them fit for becoming Judges of original jurisdiction.

* *Vide* paper presented, 13th March 1832, to House of Commons, No. 274.

If this object can be accomplished, a very great saving of expense will ensue. For the salary with which a Native Judge would be amply remunerated is quite trifling in comparison with the amount necessary to tempt a competent European to undertake so laborious an office in so warm a climate and in so distant a region.

But, independently of the economical question, it is of the utmost importance, with a view to the future stability of our dominion in the East, and the improvement of our Native subjects in general, that

the higher classes among them should be rendered morally and intellectually competent to fill offices of trust.

What I now purpose is, that one of the three Assessors in each court of original jurisdiction should be a permanently official person, receiving such a moderate salary as will be necessary to remunerate a Native of respectable station for giving up his whole time to the public.

It would be scarcely worth the while of any suitor to attempt to bribe or intimidate a functionary having so little power to affect the fate of the cause, except by reasons founded in law and justice; and as all the functions of the Official Assessor will be performed under the eye of the European Judge and public, an attempt on his part to sacrifice justice to his private interests could hardly end in anything but detection and disgrace.

Here, then, will be a public servant, obliged by his office to revolve constantly in his mind the maxims of law and morality, and to assist, by his opinion and advice, in the application of them to the real business of life, who will at the same time be removed, by his peculiar position, from all temptation to pervert those maxims to purposes of chicane, fraud, or oppression.

It seems difficult to imagine a situation better calculated to strengthen the principles of morality, by exercising them in the solution of real and practical questions, and at the same time to avoid the mischiefs which might result from the insecure hold which those principles have hitherto acquired over the minds of the Natives in general.

A Native who has for some years been subjected to this discipline, and who has gone through his noviciate with credit, may, I think, be very safely placed in the more arduous and responsible office of a Judge of original jurisdiction, and by such an appointment four-fifths of the salary necessary to remunerate a European Judge will be saved to the public, the honorable ambition of the upper classes of Natives will be safely gratified, and the great mass of the people will be bound by ties of affection to a Government which ceases to withold offices of power and emolument from its Native subjects, as soon as they become qualified to fill them with advantage to the Native community.

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*Minute by the* Hon'ble Mr. Cameron,—*dated July* 1842.

1. Upon this recommendation I have the misfortune to differ from my colleagues. I would have the time which they think should be passed in the Revenue and Police Departments occupied in sitting as an Official Assessor at the Presidency or in the Mofussil, and in performing such ministerial duties as the Judge may properly delegate.

2. It is said that in India, and particularly in the Presidencies of Madras and Bombay, a young Civil Servant, who has passed some years in the Revenue Department, makes a better Judge than one who, under the present system, has been always employed in the Judicial Department.

3. This proposition is proved by so many and such competent witnesses that I cannot refuse my assent to it.

4. But under the present system there is nothing that can be properly called judicial apprenticeship, excepting the appeal (and the appeal considered as a means of instructing inexperienced Judges is a most defective instrument) there is nothing to correct the erroneous notions which a young man may fall into at the commencement of his judicial career, and it is consequently probable that many of those erroneous notions may become inveterate.

5. But in our scheme of Official Assessors there is a real apprenticeship, under a competent instructor always present and ready to remove the false impressions which might otherwise mislead the beginner.

6. I do not, therefore, hold the proposition, which I admit to be proved by testimony, to be conclusive of the present question, and with respect to certain arguments which I have seen used in support of that proposition, and which if sound would be conclusive of the present question, I think I can shew that those arguments involve a great and very dangerous, because very plausible, fallacy.

7. The fallacy is that of not distinguishing between the knowledge which a Judge ought to bring into court and the knowledge which he ought to acquire in court through the various instruments of evidence, or, in other words, of not distinguishing between jurisprudence and the several subject-matters to which the principles of law and justice are applied by means of jurisprudence.

8. I admit that a knowledge of the several subject-matters which he has to deal with, would be useful to a Judge if he could acquire that knowledge without sacrificing time which ought to be occupied in the study of law and jurisprudence. But believing that such knowledge cannot be acquired without making that sacrifice, I think, upon the whole, such knowledge is not useful to a Judge.

9. With regard to such subject-matters as only appear at intervals in courts of justice, there is probably no difference of opinion among the thinking men. No one probably would contend that a Judge ought to make himself a good chemist or a good navigator, because he may have occasionally to decide suits for infringing a chemical patent or for running down a ship. But in the courts of the East India Company so many suits relate to subject-matters connected with the Revenue system of the country, that men of great and deserved reputation have thought a Judge ought on that account to have a practical knowledge of that system.

10. An aspirant to a seat on the bench of these courts ought certainly to learn the revenue law which he is to administer. We ought also to learn by constant attendance in court how that law is to be applied to the affairs of men. But that he should on this account go through such an apprenticeship as would fit him for the discharge of a revenue office, is to require something of him which cannot be attained without a very serious interruption of his properly judicial education.

11. Let us consider a question of the same kind where there is no authority of respected names to withdraw our consideration from the mere reason of the thing.

12. There is in the county of Cornwall a court called the Court of the Stanneries, in which all the suits arising out of the business of mining are decided. How should an aspirant to the bench of that court be educated? I should say he ought to learn the general law of England and the particular law of the mining districts by reading, and so much of the business of mining as may be thought necessary to him by sitting as an Official Assessor to the present Judge. He will thus acquire at the same time a practical knowledge of Cornish mining, so far as it forms the subject-matter of law-suits, and of law as applied to Cornish mining; whereas if he were sent for three years to acquire practical knowledge under the superintendent of a copper-mine, it is to be feared that there would be an irreparable *hiatus* in his judicial pursuits.

13. The grounds, however, on which my colleagues recommend a revenue apprenticeship for judicial officers are different from those of which I have been endeavouring to expose the fallacy.

14. To them "it appears that by such employment in the Revenue Department as they contemplate, a young man would acquire a better command of the Native languages, which he must of necessity be continually using, than if he were occupied during the same time in the duty of an Assessor to a court without any obligation, or having any need to take an active part in the proceedings as interlocutor."

15. As the Official Assessor is bound to express an opinion upon the case, and as he is liable to be consulted by the Judge at any moment during its progress, it seems to me that the shame of being obliged to confess, or of letting it be seen in public, that he does not understand what is said, would be a very powerful stimulus to the acquisition of the language in which the proceedings are conducted,—such a stimulus as I should suppose none but the incorrigibly idle and worthless could disregard.

16. It also appears to my colleagues that "a man whose duties have brought him into contact with people of all classes, and have afforded him opportunities of making himself acquainted with their manners and habits, their ways and forms of dealing and intercourse

with each other, and the details of their economy generally, who has conversed with them freely, and is used to hear them speak without reserve, is likely to be better able to deal with a witness so as to *elicit* the truth from him and to know when he has got the truth, better able to estimate the value of Native documents exhibited in evidence, and to understand the merits of causes turning upon the ordinary transactions and dealings of Natives among themselves, better able, therefore, in general, to perform the office of a Judge than one of the same standing who has had no opportunities of becoming acquainted with the character of the Natives, except as it has been exhibited by those whom he has had to do with only as adverse litigants or as tutored witnesses."

17. If the question were simply, which of these two men is likely to know most of the Natives, I should not probably have much difficulty in giving the same answer as my colleagues would give; but the question is, which of these two men is likely to know most of the Natives considered as "adverse litigants and tutored witnesses." To that question I am compelled to answer, "he who has devoted his time to the study of them in that particular character, under the advice and correction of a man who has already acquired expertness in the process of examination and sagacity in estimating the results." If it should be objected to my opinion that the popular theory of the jury is opposed to it, I can only answer that I hold the popular theory of the jury to be fundamentally and completely erroneous.

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*From* LORD ELLENBOROUGH, *Governor General of India, to the President of the Indian Law Commission,—dated 23rd July* 1842.

I have the honor to acknowledge the receipt of the reply of the Indian Law Commissioners to my letter of the 4th of April last.

I beg you will yourself accept and do me the favor of communicating to your brother Commissioners my best thanks for this elaborate, full, and able report upon the several important matters connected with judicial administration in India.

I will give my earliest and most careful attention to the several suggestions the Commissioners have offered.

I request that this reply of the Commissioners to my letter of the 4th of April may be communicated, as they desire, to the Hon'ble the President in Council as a formal reply to the official reference upon the same subject, made to the Commissioners in August 1838; and I beg you will inform His Honor that I think it desirable that the paper should be printed.

*RESOLUTION,—By the Government of India, Legislative Department,—dated 23rd December* 1842.

Read Despatch from the Hon'ble the Court of Directors,—No. 17, dated 2nd November 1842.

The Hon'ble the Court of Directors call for the instructions under which the Law Commissioners furnished their report of the 2nd July last, on the legal training in India of the Hon'ble Company's Civil Servants destined for the judicial branch of the Service.

This subject was under the consideration of the Government of India in 1838, and the reference which was then made to the Law Commissioners was reported to the Hon'ble Court in the Despatch from the Judicial Department, dated 12th September 1838, No. 13.

It was decided that the subject should be taken into consideration in connection with the system of judicial procedure. But the instructions under which the Law Commissioners have furnished a special report, not being on record in the office of the Secretary in this Department, the Hon'ble the President in Council resolves that the Law Commissioners be requested to furnish a copy of those instructions which shall be transmitted to the Hon'ble Court as soon as received.

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*From* T. H. MADDOCK, ESQ., *offg. Secy. to the Govt. of India, Legislative Department, to the Secretary to the Indian Law Commission,—No. 105, dated 23rd December* 1842.

I am desired by the Hon'ble President in Council to request that you will, with the permission of the Law Commissioners, forward a copy of the instructions, dated 4th April last, under which their report on the Civil Service, dated the 2nd July last, was furnished.

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*From* A. R. YOUNG, ESQ., *Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Dept.,—No. 1956, dated 24th March* 1859.

I am directed to forward, for the consideration and orders of His Excellency the Right Hon'ble the Governor-General of India in Council, the accompanying copy of a minute this day recorded by the Lieutenant-Governor, relative to the training of Judicial Officers.

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*Minute by the Hon'ble the Lieutenant-Governor of Bengal,—dated 24th March* 1859.

Training of Judicial Officers.

We are no nearer than we were twenty years ago to a system of judicial training for our civil officers; and while we are supposed to be improving our civil and criminal procedure laws, we are doing nothing whatever to improve our Judges.

2. The whole subject is too large to be entered upon by a merely local Lieutenant-Governor, especially at the very close of his administration. But though no extensive measure can be now proposed by me, I am willing to try if some small beginning may not be made in the better preparation of our junior civil officers for the judicial duties which will hereafter await them. We have now a greater number than usual of junior Civilians at our Mofussil stations; and I am disposed to think that some of them might with advantage be nominated Assistants to the Civil and Sessions Judges, in addition to their present duties. I have been assured that their services might be made useful in many ways by Zillah Judges not averse to bestow a little trouble on the instruction of their juniors, and thus they might after a time become fit to be employed as Assessors in the trial of cases, and even (though this would perhaps require an alteration of the law) in the trial of small causes, such as are now assigned to Moonsiffs, or such as would be tried by Small Cause Courts if we had such in the Mofussil.

3. I desire, therefore, to ask permission of the Government of India to appoint certain of the junior civil officers, now employed as Assistants to Magistrates and Collectors, to be also Assistants to Judges; and to direct the Judges to use their services in the manner best fitted to afford them a gradual insight into the duties of a Civil and Sessions Judge, and to report from time to time on their progress.

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*From* W. GREY, ESQ., *Secretary to the Government of India, Home Department, to the Secretary to the Government of Bengal,—No.* 863, *dated* 28*th April* 1859.

I am directed to acknowledge the receipt of your letter, No. 1956, dated the 24th ultimo, forwarding, for the orders of His Excellency the Governor-General in Council, a Minute by the Hon'ble the Lieutenant-Governor, relative to the judicial training of junior Civil Servants.

2. His Honor requests the permission of the Government of India to appoint certain of the junior civil officers now employed as Assistants to Magistrates and Collectors to be also Assistants to Judges, and to direct the Judges to use their services in the manner best fitted to afford them a gradual insight into the duties of a Civil and Sessions Judge.

3. The Governor-General in Council considers that the measure proposed by the Lieutenant-Governor is a very good one, and is pleased to sanction it accordingly.

*From the Government of India, to the Right Hon'ble the Secretary of State for India,—No. 61, dated 20th May 1859.*

You will perceive from the accompanying correspondence that on the recommendation of the Government of Bengal, we have sanctioned the employment of junior Civil Servants as Assistants to Civil and Sessions Judges in the Lower Provinces, with a view to training them to the performance of judicial duties.

From Bengal, No. 1956, dated 24th March 1859, and enclosure.
To Bengal, No. 863, dated 28th April 1859.

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*Extract of a Despatch from the Right Hon'ble the Secretary of State for India, to His Excellency the Governor General of India in Council,—No. 38, dated 23rd September 1859.*

*Para.* 10.—"When the measure shall have been in force a sufficient length of time, you will call upon the local Government for a report on its operation, and the extent of success which has attended it."

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*From* W. Grey, Esq., *Secretary to the Government of India, Home Department, to the Secretary to the Government of Bengal,—No. 2359, dated 26th November 1859.*

With reference to the correspondence noted on the margin, relative to the judicial training of junior Civil Servants, I am directed to transmit the accompanying extract (para. 10) of a despatch, No. 38 of 1859, dated the 23rd September, from the Right Hon'ble the Secretary of State for India, and to request that, with the permission of the Hon'ble the Lieutenant-Governor, the report therein referred to, may be furnished in due course, for transmission to Her Majesty's Government.

From Secretary, Government of Bengal, No. 1956, dated the 24th March 1859 and enclosure.
To ditto, No. 863, dated 28th April 1859.

*From* H. L. ANDERSON, ESQ., *Secy. to the Govt. of Bombay, to the Secy. to the Govt. of India, Home Department,—No.* 76, *dated* 26*th November* 1859.

I am directed by the Right Hon'ble the Governor in Council to forward to you, for submission to the Government of India, copies of the proceedings quoted in the margin, on the subject of a proposal to provide a course of legal study for Civilians designed for the judicial branch of the Service.

From the Director of Public Instruction, dated 6th September 1859, No. 1904.
Memorandum by the Chief Secretary, dated 9th September 1859.
Minute by the Right Hon'ble the Governor, dated 10th September.
Minute by the Hon'ble Mr. Malet, dated 13th September.
Minute by the Hon'ble Mr. Reeves, dated 19th September.
Further minute by the Right Hon'ble the Governor, subscribed to by the Hon'ble Board, dated 23rd September.
Letter to the Director of Public Instruction, No. 2302, dated 29th September.
From the Director of Public Instruction, dated 17th October, No. 2394.
Memorandum by the Chief Secretary, dated 20th October.
Minute by the Right Hon'ble the Governor, subscribed to by the Hon'ble Mr. Malet, dated 21st October.
Minute by the Hon'ble Mr. Reeves, dated 4th November.
Further minute by the Right Hon'ble the Governor, without date.
Further minute by the Hon'ble Mr. Malet, dated 5th November.
Further minute by the Hon'ble Mr. Reeves, dated 5th November.
Further minute by the Right Hon'ble the Governor, dated 7th November, subscribed to by the Hon'ble Mr. Reeves.
Copy of a despatch to Her Majesty's Secretary of State for India, dated 26th November 1859, No. 30.

2. The opinion of the Bombay Government on this important question will be found recorded in the several minutes, which accompany the proceedings.

3. These papers have also been forwarded for the consideration of Her Majesty's Secretary of State for India.

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*From* E. J. HOWARD, ESQ., *Director of Public Instruction, to the Chief Secretary to the Government of Bombay,—No.* 1904, *dated the* 6*th September* 1859.

I hope I shall not be considered as going beyond my province in addressing Government on a subject which seems to me to deserve their most serious attention.

2. There is a system of legal instruction in this Presidency, carried on by competent professional men at the expense of Government, and which, as the recent examination shows, is diligently and profitably attended by Native students, and by them only.

3. Government have acknowledged the claims of these young men to judicial promotion, and two of them have already been entrusted with the responsible office of Moonsiff.

4. On the other hand, all the superior judicial offices are exclusively reserved for Covenanted Civilians. The young gentlemen of this Service educated at Haileybury have had some slight tincture of legal education in England. You will correct me if I am wrong, but my impression is, that that legal instruction was very slender, and quite inadequate to supply even the foundation of really practical legal knowledge.

5. As regards the new order of Covenanted Civilians, I am probably right in supposing that not one of them has ever had even the slightest instruction in law or jurisprudence, though their education has been admirably adapted as a basis for such instruction.

6. In these facts, I see the possibility of grave complications at no very distant period.

7. The "Company's Courts," as they are called, offer the most favorite mark to European and Native agitators against the Indian Government. Few know anything about their real working, but the broad fact that they are presided over by Judges without law is easily worked up as an effective rhetorical topic.

8. I shall not be suspected of wishing to sneer at my own profession when I mention, that, as the agitators to whom I allude either are, or employ as their mouth-pieces, English lawyers, the remedy they naturally propose for the evil is the importation from England of a number of lawyers to fill the judgment-seats of the Mofussil.

9. The obvious answer always made to this proposal is, that these imported barristers would probably be "briefless" young men of no great learning and ability, and would certainly know nothing of the country, the system of administration, the people, their languages, habits, usages, and feelings. And the strength of this answer is such that the project has never seriously been pressed by any Statesman of weight.

10. But I would earnestly beg Government to look forward a few years to a time when the project will be revived in a form to which that answer will not be applicable. The Bombay Native Association four years ago, in a memorial to the Government, which I quote from memory, prayed that Indian courts might be presided over by lawyers "trained either in England *or in this country.*"

11. The time is fast approaching when lawyers "trained in this country" will be procurable in such numbers, and possessed of such professional attainments and practical experience, as to constitute a formidable body of rivals to the untrained Judges of the Civil Service. Whatever agitation has been carried on in the interests of English barristers, will be renewed with ten-fold force of reasoning in favor of a class of men professionally trained, to whom none of the objections can be made that I have mentioned in my 9th paragraph.

12. All the usual misrepresentations and exaggerations, all the practised calumnies of faction, will be brought to bear in support of a cause which in the main would be a true and just cause, and, to the English Parliament unacquainted with this country and its people, would seem even more true and just than it is.

13. I am well aware that many members of the Civil Service believe that a Judge in this country need have no law, that "common sense" is enough for him, illuminated by practice and a knowledge of

the people. To this, it would certainly be replied, with unanswerable force, that the question is not between knowledge of law on the one hand, and practical experience on the other, but between law and no law, practical knowledge being equal on both sides.

14. There are indeed those, but it is hardly worth while to argue with them, who maintain that legal knowledge would be positively injurious to the usefulness of a Mofussil Judge, as likely to make him the slave of technicalities instead of a dispenser of justice.

15. Government have deliberately decided the contrary by establishing institutions for legal education. Law was mentioned in the celebrated Educational Despatch of the late Court of Directors, as one of the most important branches of instruction to be given to Natives, and the paradox that a Judge is all the better for ignorance of law, has only been maintained by anonymous writers in Indian Newspapers.

16. The question then will present itself before many years, "can Government continue to exclude from the highest judicial offices the only men who are specially educated and competent to fill them?"—and if the answer is in the negative, the result will be literally, sooner or later, to give Natives a monopoly of the judicial bench.

17. If this consummation is agreeable to the policy of Government, all is well. But if they design to keep the higher judicial offices in the hands of Englishmen, something must be done to supply Englishmen qualified to hold such offices.

18. The preference given to Europeans in India, as I understand, is not given to their blood, but their presumed merit. This merit, it is true, is not thought to be founded solely on their intellectual qualities or acquired knowledge. Government have an assurance that an English gentleman has been bred up under the motives and restraints of a Christian home; that he has lived without stain among men of honor (according to English notions of honor); and finally, that he is, and even to death will be, a true and loyal servant of the Queen. Without wishing to say anything offensive against our Native fellow-subjects, it is certain that an English Government cannot repose the same kind, or at least the same amount, of trust on its Native servants whose life and antecedents are hidden, as it were, behind a veil from English eyes.

19. Still a Native student, who has passed through college and the law classes with a good character, who has spent some years in practice as a Vakeel, or in the office of Sheristadar, and afterwards served with credit as a Moonsiff and Sudder Ameen, has a right to be considered as trustworthy for yet higher office, and certainly his claims would appear strong against those of an English Civil Servant who had never opened a law book, or mastered a principle of jurisprudence.

20. The practical truth which I am endeavouring to enforce has already to some extent been recognized by the Government. Junior

Civil Servants have been invited to attend the law lectures at Bombay and Poona, and Norton's Law of Evidence has been introduced as a text book into the departmental examinations. But I am humbly of opinion that this is not enough. Few will attend the lectures, and few will really prepare the text book. And even if every candidate for the judicial branch did both, how slender his attainments would be, compared with those of a regular attendant for four years at the law school whose knowledge has been tested annually by such examinations as those which for the last two years have been conducted by Mr. White and the Director of Public Instruction.

21. When the University grants its Degrees in law, the contrast will be made still more striking.

22. I am therefore humbly of opinion that, if it is intended to reserve the higher judicial offices to Europeans, no time should be lost in laying down a course of legal study to be passed by all Civilians designed for that branch of the public service.

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*Memorandum by the Chief Secretary to the Government of Bombay,—dated 9th September* 1859.

Mr. Howard is no doubt right in his supposition that the knowledge of law possessed by most Civilians on leaving Haileybury is very slight, and there is no security that the young men who have gained their appointments by competition, have acquired even the first rudiments of legal knowledge.

Nor can it be denied that, under the recently established educational institutions of this country, a class of young men are being rapidly perfected in a sound knowledge of law and jurisprudence, which must call for far greater technical attainments in those who occupy the judicial bench, than has hitherto sufficed to command the respect of the pleaders in our courts of justice. The subject is one which demands early attention; but as it is one which affects the whole of India, perhaps the best course would be to forward Mr. Howard's letter to the Secretary of State for such consideration as he may consider called for.

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*Minute by the* Right Hon'ble Lord Elphinstone, *Governor of Bombay,—dated 10th September*, 1859.

I think Mr. Howard deserves the thanks of Government for calling its attention to a point of great importance. I have no doubt, then, in a very few years, we shall have numbers of Natives who are perfectly qualified by legal knowledge and practice for the highest judicial offices, and I have no desire to exclude them from these; but at the same time I should think it a misfortune if these offices were either filled exclusively by Natives, or if a contrast, unfavorable to the European Judges, could be drawn between them and their Native colleagues.

I think it is indispensably necessary that the European candidates for the judicial office should have a legal education. It is very difficult to say how this is to be effected ; but the subject, as remarked by the Chief Secretary in his memorandum, is one which concerns not this Presidency only, but the whole of India. It should, therefore, be brought to the consideration of the Government of India, and of Her Majesty's Secretary of State, and the Council of India.

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*Minute by the* Hon'ble Mr. Malet,—*dated 13th September* 1859.

I concur in the view of this subject taken by the Right Hon'ble the President, and I have no doubt that a legal education is daily becoming more necessary for the civil officers employed in judicial office. Hitherto the whole of the members of the department have alike educated themselves in the practice of their profession, but the admirable legal education which is now open to all in this country, and of which intelligent Natives are taking the earliest advantage, will make a most material change ; and it becomes absolutely necessary to provide that the European employès shall not lack that knowledge which the Natives are so rapidly acquiring.

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*Minute by the* Hon'ble Mr. Reeves,—*dated 19th September* 1859.

We shall now find the inconvenience of the abolition of Haileybury, and be convinced, if ever we doubted it, that it would have been far better to have supported and perfected that Institution than to have done away with it owing to some acknowledged imperfection.

I have frequently felt the importance of what Mr. Howard has so well put in his letter ; and more especially was I so impressed after reading the last examination papers very recently sent in for the information of Government. I concur in opinion that something must be done towards supplying that want of legal knowledge in the judicial branch of the Civil Service, which will now very soon become a most serious difficulty in more ways than one. I agree, also, that the subject must go before the Government of India, but I venture to suggest that, in submitting it for the consideration of His Excellency the Governor General in Council, it would greatly facilitate a decision if we were to accompany our reference with a plan for giving young Civilians that particular kuowledge which it is clearly perceived that they must possess; and I believe that we could not do better than ask Mr. Howard himself for advice on this head. I have ascertained that he is willing to give it, provided sufficient time be afforded him for consideration.

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*Further Minute by the Right Hon'ble the Governor of Bombay, subscribed to by the Hon'ble Board,—dated 23rd September* 1859,

I agree with my Hon'ble colleague that our reference should be accompanied by a proposal for giving young Civilians the required

legal instruction, and that Mr. Howard would be the best person to offer advice upon this important point. I would, therefore, before submitting the matter for the consideration and orders of the Government of India, request Mr. Howard to favor us with his views as to the best mode of securing this most desirable object.

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*From* H. YOUNG, ESQ., *Chief Secretary to the Government of Bombay, to the Director of Public Instruction,—No.* 2302, *dated* 29*th September* 1859.

I am directed to acknowledge the receipt of your letter (No. 1904), dated 6th instant, directing the attention of Government to the necessity of supplying the want of legal knowledge in the judicial branch of the Civil Service, and suggesting that a course of legal study be laid down to be passed by all Civilians designed for that branch of the public service.

2. In reply, I am desired by the Right Hon'ble the Governor in Council to convey to you the thanks of Government for calling their attention to a point of such great importance, and to inform you that, as the subject is one which concerns not this Presidency only, but the whole of India, it will be brought under the consideration of the Government of India, and of Her Majesty's Principal Secretary of State, and the Council of India.

3. The Right Hon'ble the Governor in Council is of opinion, however, that it would greatly facilitate if the proposed reference were accompanied by a plan for giving young Civilians the required legal instruction, and I am directed to request that you will be so good as to favor Government with your views as to the best mode of securing this most desirable object.

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*From* E. J. HOWARD, ESQ., *Director of Public Instruction, to the Chief Secretary to the Government of Bombay,—No.* 2394, *dated, Poona,* 17*th October* 1859.

I have the honor to acknowledge the receipt of the Government letter, No. 2302, dated the 29th September 1859.

2. With very great diffidence I submit such a plan as is called for by the Government.

3. Considering the powers of application, general abilities, and high education, which are presumably possessed by successful competitors for the Indian Civil Service under present rules; and considering what are the requirements of a Provincial Indian Judge in respect of positive legal knowledge, I think that two years ought to be spent by gentlemen designed for the judicial branch of the service in the study of law as a science.

4. Of these two years I would have one passed in England in the study of general jurisprudence, and I would extend this rule to *all* young Civilians after appointment; for a tincture of such knowledge will certainly be of the greatest practical use to them in all the

duties magisterial, revenue, diplomatic, or financial, as well as judicial, that they may have to perform in this country.

5. In order to ensure that this first year's study shall be conscientiously performed, I would institute an examination at the end of it to be passed satisfactorily before the Civilian can obtain leave to proceed to India.

6. During the year a reasonable subsistence allowance should be made to the Civil Servant, with a further small allowance for the purchase of law books.

7. This year's study, however, need not be required of young men whose answers at the examination for appointments show that they have attained the requisite proficiency in jurisprudence, (for the Standard, *vide post* para. 52 *seq.*), or who have obtained University honors in law or jurisprudence.

8. Facilities exist for the study of jurisprudence at Oxford, Cambridge, the Inns of Court, and, I believe, at Edinburgh and the Irish Colleges. I should leave the Civilian to acquire the necessary knowledge wherever he may think proper; but the examination should, I think, be held in London. Possibly the Council for Legal Education of the Inns of Court would allow their examining machinery to be made use of for the Indian Civil Service. If not, separate examiners, of whom there should be at least two, must be engaged specially by the Home Government.

9. I think it likely that there will be some difficulty in arranging this part of the scheme, though not perhaps so much now as there was a few years ago, legal education having been of late more completely organized by the Inns of Court. But writing in India, I am unable to do more than indicate what I think necessary or fitting to be done in England without showing how it is to be done.

10. No young Civilians should be appointed to the judicial branch of the Service without at least a year's study of law in India, and passing an examination for which facilities are already provided in the law schools established by Government at the several Presidencies (for Standard, *vide post* para. 68 *seq.*)

11. After passing the law examination in India satisfactorily, I propose that the young Civilian should be attached to the office of some Judge, for the purpose of learning the practical exercise of his profession (*vide* post paragraph 73).

12. My plan would thus embrace one year's study in England tested by an examination, a second year's study similarly proved in India, and a further period (of which the duration cannot be defined) of practical training under a Judge. I now proceed to fill up portions of this outline.

13. *Study in England.*—I have already stated that I would not dictate to the student where he is to acquire his knowledge of jurisprudence. But in that case, the final examination must be very carefully devised and firmly conducted so as to ensure a year's genuine

study without any possibility of evasion, and to guard effectually against "cramming."

14. *Jurisprudence.*—The next point is to define the sense in which the term "jurisprudence" is to be understood as a subject proposed for the study of candidates for the Indian Provincial bench.

15. I am so sensible of the difficulty of determining this question without the opportunity of conference with qualified advisers, that I must beg to be understood as only offering suggestions which may constitute a provisional basis for discussion. I suggest that the point should be decided in England, where eminent persons have, for some years past, been engaged in considering the principles of legal education, and I would respectfully point to Sir Richard Bethell, Her Majesty's Attorney-General, and now or late the Chairman of the Council of Legal Education in the Inns of Court, as the authority to whose judgment I would most confidently appeal, on the recommendation which I shall now have the honor to submit.

16. By jurisprudence I understand the principles of right and duty which lie at the bottom of all positive laws among all civilized nations.

17. How can these principles best be investigated for the purposes of an Indian Judge?

18. Some would recommend an abstract course of study, such as might be comprised in the several works of Bentham and Austin, in which questions of law are raised and decided on philosophical grounds, without reference to the positive institutions of any country.

19. With great deference I think that such a course of study, however useful and elevating to a practising lawyer or a legislator, would not be the best for a young student, who, in the pursuit of metaphysical trains of thought, would be apt to lose sight of the practical bearings of legal principles.

20. It seems to me that the theory of law would, for the purposes of a future Judge, be more usefully studied in the concrete, that is, as embodied in positive legal institutions which have stood the test of experience, and have been developed to meet the actual wants of mankind.

21. No legal system existing in India can be advantageously selected as the basis of scientific legal study.

22. The Hindoo and Mahomedan codes are unsystematic, and are bound up with religious dogmas in such a manner and to such an extent as to render them quite unsuitable for the purpose required.

23. The English Statute Law of India, prevailing beyond the local jurisdiction of the Supreme Courts, is too fragmentary and incomplete to constitute the ground-work of jural study; and even when the several contemplated codes are promulgated, they will not supersede the necessity of a previous scientific training in the principles of law any more than the code Napoleon has done in France.

24. The common law of England (in its widest sense) is not open to the objections above-mentioned, but, as I humbly think, it is almost equally unsuitable as the basis of an Indian Judge's education.

25. The English law is vast in extent, highly artificial, and unsystematic.

26. It retains many feudal and other technical doctrines which must be investigated historically before they can be understood, and thus inflicts upon the student much labor which, for the training of an Indian Judge, would be almost or quite useless. I would refer as an illustration to the highly abstruse doctrines relating to interests in land, technically called the law of real property, which are totally inapplicable to India. Again, in the less peculiar and more scientific law of contracts as enforced in English courts of justice, there are fundamental rules (such as the division into contracts of record, specialities, and simple contracts), and the distinction between defences at law and equity, which are in their nature arbitrary and *pro tanto* inapplicable to a Provincial court of justice in India, either for direct use or scientific reference.

27. Probably the rules which make up what is called the law of evidence, are the only portion of the English law which could with advantage be minutely studied by the ordinary candidate for an Indian judicial appointment.

28. Furthermore, and this is the main consideration, English law is founded on precedents, and not on principles. Though English lawyers are in the habit of using the word "principle" as applied to legal doctrines, it is still nevertheless certain that there are no principles properly so called in the English system. General *formulæ* may, indeed, be eliminated by comparing the language of learned Judges in their reported decisions, and the generalizations of text-book writers are occasionally recognized by courts of justice as correct statements of the law; but there is no systematic development of legal doctrine by deduction from fundamental maxims recognised by the English law, and in this sense it has no principles or scientific method.

29. The time and labor required for the thorough study of the English law, in consequence of its unsystematic character, are very great, and far more than a young Indian Civil Servant could devote to it; and a superficial study of so vast a fabric of legal doctrine would, in the majority of cases, be positively mischievous to him.

30. It seems to me to remain that the Roman civil law, as a branch of general jurisprudence, must be adopted as the basis of juristic study.

31. The prejudices of English lawyers against the Roman law are historical; and it is among barristers and attorneys a common impression that there is something essentially impractical in that learning. But I am prepared to show that those prejudices are not shared by the leading members of the legal profession in England, who have devoted themselves to the subject of legal education, and I am quite

willing that the suggestion should be judged of by those whose educational authority is most universally recognized.

32. The Committee on Legal Education of the Middle Temple Society reported in 1845 that the study of jurisprudence and the civil law would "supply a long-admitted deficiency in the education of English lawyers"; and to illustrate the benefit which in the view of the Committee would result to the students from the appointment of a reader on those branches of learning, they defined the sense in which they used the terms "civil law and jurisprudence" as follows:—

"By the term 'jurisprudence,' the Committee mean to indicate general jurisprudence, as distinguished from the particular jurisprudence of any individual nation, and which, in further explanation of their meaning, they would divide into positive jurisprudence or the philosophy of positive law, and comparative jurisprudence or the exhibition of the principles of positive law in an embodied form by a comparison of the jurisprudence of modern nations. In the first, they would have the lecturer also include the important subject of the 'interpretation of laws,' and, under the latter head of comparative jurisprudence, the 'conflict of law' may with propriety be comprised.

"By the term 'civil law,' the Committee wish to indicate what may be called 'modern Roman law,' that is to say, those portions of the civil law which, being of a universal character, and applicable to the relations of modern society, have formed the basis of the jurisprudence of many Continental nations, and entered so largely into our own.

"The Committee are of opinion that this study of the theory of the civil law may be most advantageously combined with the study of jurisprudence, and that the two united will furnish the best means of preparatory legal culture, and the formation of an enlarged and comprehensive legal mind."

33. The Commissioners appointed by Her Majesty to enquire into the arrangements of the Inns of Court for the promotion of the study of law and jurisprudence, in their report dated 10th August 1855, after stating that the present system of studying in the chambers of a practising lawyer affords no facilities for the study of the "scientific branches of legal knowledge, including under that term, constitutional law and legal history, and *civil law* and jurisprudence," proceed to say that "some knowledge of these subjects must be useful to the barrister, not only as an advocate, but as a Judge, and *especially if he should be appointed to any judicial office in India.*"

34. It will be observed that the Commissioners had not then before them the case of Indian Civilians, but of barristers, who, from the vast extent of the Municipal English law, certainly have neither as much leisure as the former, nor as much visible need for preliminary studies such as civil law and jurisprudence. Any recommendation of the study of civil law to an English barrister

would obviously apply with much greater force to a candidate for the Mofussil bench in India.

35. In the appendix to the report of Commissioners is an extract from a report by the Committee of the Faculty of Advocates (Edinburgh 1854), from which I quote the following:—

"The civil law constitutes the basi of nearly all the laws of Europe, and is the best substitute for lectures on general jurisprudence. The circumstances of the present times prove the truth of Lord Stair's opinion, that no man can be a knowing lawyer in any nation who has not well pondered and digested in his mind the common law of the world.

"In requiring the civil law as an essential branch of the legal education of a Scottish advocate, the Committee are only enforcing the rule sanctioned by the prescription of three centuries. They are by no means desirous of attaching an undue degree of importance to its study, or to claim for it the undistinguishing veneration with which the Faculty were in former days asked to regard it. They claim for it only such a degree of attention as it is entitled to from its merits—merits which have been acknowledged by men whose partiality for their own common law gives weight to their testimony.*

"A system which has contributed to give form and consistency to the law of Scotland could not be overlooked in an enlightened system of legal education. But independently of its special claims on the notice of a Scottish Lawyer, the jurisprudence of the greatest nation of antiquity must possess an imperishable interest in the eyes of those who regard law as a science, every step in the development of which has its value and importance, as tending to accomplish the establishment of sound principles of legislation, and the correct administration of justice.

"Accordingly it has been nearly the universal rule of all the States of Europe to enforce upon the advocates of the Supreme Courts the study not merely of the jurisprudence of the locality, but also that of the civil law, not so much for its immediate use in practice, as because its study humanizes the mind, gives a larger and more comprehensive view of jurisprudence, and furnishes at the same time the many informing aids that are to be derived from the history of other times."

36. Such are the collective resolutions of three learned bodies of lawyers recently engaged in devising schemes of legal education.

37. The Commissioners appointed to enquire into the Inns of Court examined several distinguished persons on the subject of the study of the Roman civil law, and there was a remarkable, if not

* The Roman law forms no rule binding in itself on the subject of these realms; but in deciding a case upon principle, where no direct authority can be cited from our books, it affords no small evidence of the soundness of the conclusion at which we have arrived, if it prove to be supported by the law, the fruit of the researches of the most learned men, the collective wisdom of ages, and the ground-work of the Municipal law of most of the countries of Europe (per Chief Justice Tindal, Acton and Blundell, 12 Meeson and Welsby, page 324).

an absolutely complete, concurrence in their views as to its great utility in furnishing a scientific foundation of legal study for an English barrister.

38. Mr. Hastings gave the following evidence:—

(1629). "Do you think the study of the civil law and of general law would be a means of effecting an improvement in the minds of the practitioners at the bar generally? 'I think it would.'

(1630). "'Notwithstanding the different basis upon which the two laws* rest, I think our law rests to a great extent upon the Roman law. I think the study of the broad principles of the Roman law tends to enlarge a man's mind, and makes him regard the sciences in a way that is very desirable.'

* The English and the Roman.

(1631). "With respect to the law of contract, would not the principles of the Roman law be of considerable use in directing the judgments of the bar as applied to the English law? 'Yes, I have studied the Roman law a good number of years myself, and I think I have derived great benefit from it.'"

39. I would refer to almost the whole of Mr. J. G. Phillimore's evidence as to the defective education (in his judgment) of English lawyers, and the supposed inferiority of the English to the French bar as jurists, which he attributes to the absence in England of the study of the Roman law and the theory of jurisprudence. "General jurisprudence," he states, "includes the study of the Roman law and the Pandects" (that is to say parts of the Pandects).

40. Sir Hugh Cairns prescribes (1652), as a fundamental course of legal study, "mainly the general system of jurisprudence as a system of ethics, and the knowledge of civil law as connected with classical and historical learning."

41. I beg leave to refer more particularly to the opinion of the eminent German Civilians consulted by Mr. Greenwood, and recorded in his special "report upon the systems of legal education pursued in the different States of Germany," appended to the Commissioner's report.

42. Dr. Guist of Berlin says, "I think the study of the Roman law *essential to a systematic legal education.*" Upon subjects relating to private right and personal contracts, and the duties which flow from them, there is no system of law in which principles are investigated with more good sense, or declared and enforced with more accurate and impartial justice.

43. To the same effect is the emphatic testimony of Dr. Wangerow, Dr. Mittemaier, and Dr. Wahloff.

44. The first named says: "In my estimation there is no better mode of cultivating the science of legal thinking and the interpretation of laws, than the study of their (the Roman jurists') works."

45. All these opinions, I repeat, have reference to the training of an English barrister, who has to master a vast and highly complicated structure of national jurisprudence, which might well be thought to demand his whole time.

46. The amount of positive law to be acquired by an Indian Mofussil Judge is extremely limited, and therefore in his case a broad basis of jural study, such as is provided by the civil law, is more easily laid, and is more necessary for the purpose of enabling him to adjudicate with readiness and certainty the thousand questions arising in daily life, and to unfold the reasons for his decisions with clearness and persuasiveness.

47. I will close my appeal to authorities by the very pointed testimony of Sir Erskine Perry, who sat on the Inns-of-Court Commission, and who, eleven years ago, when he was Chief Justice in Bombay, published a translation of Savigny's celebrated treatise on "Possession" (the *Jus Possessionis* of the Roman law) dedicated to the Indian Covenanted Civil Service, and intended for their use.

48. I will say in passing that this treatise is exceedingly abstruse in the translation, and could hardly, I suppose, be understood by any one who had not already acquired some knowledge of the civil law. Hence I believe Sir Erskine Perry's public-spirited design has been as yet unsuccessful.

49. The translator addressing the Civil Service, whom he compliments for their impartiality and earnestness in the administration of justice, says: "Although the subject of this work is treated very technically and solely with reference to civil law, an accurate knowledge of the distinction between possession and property, and of the legal protection afforded to the former, in order to repress violence and breaches of the public peace, is essential in all systems of jurisprudence, and will be found, I apprehend, most valuable to Indian practitioners."

50. Independently of this feature of the work, he continues: "It affords the most admirable model of strict legal reasoning, of interpretation of the language of the law, and of that practical good sense in the treatment of legal questions which the study of the Roman classical jurists seems to engender, that I have met in any modern treatise, and, as such, it seems to commend itself with peculiar propriety to your distinguished service."

51. *Course of Study.*—The arrangements sanctioned by the Council of Legal Education in the Inns of Court, comprise the following course of study:—

1*st.*—Constitutional Law and Legal History.
2*nd.*—Equity.
3*rd.*—Real Property Law.
4*th.*—Jurisprudence and the Civil Law.
5*th.*—Common Law.

52. Of these the first and fourth branches might, with advantage, be studied by the candidate for judicial appointment in India; and I

would add a general view of English law, such as is given in Blackstone's Commentaries.

53. I suggest that the weight of the examination should be thrown on the jurisprudence and civil law branch.

54. That the student should be called upon to show that he has studied the Institutes of Justinian, with some selected portions of the Pandects, by the aid of a commentary.

55. He should also have studied some recognized treatise on modern civil law, and show an acquaintance with some of the principal divergences between civil and English law, and the fundamental principles of the conflict of laws and of legal hermeneutics.

56. It should, however, be distinctly understood that the examination will not be based on any particular treatise or commentary (save, of course, the prescribed texts of Roman law), but on civil law and jurisprudence *as a subject.*

57. As regards constitutional law and legal history, a fair knowledge of Mr. Hallam's history might be accepted, and for the Encyclopœdia of English law, a modern edition of Blackstone might be taken as a basis of examination.

58. The course of study might perhaps be most conveniently indicated by the compilation of a large number of examination questions on each branch of learning.

59. *Study in India.*—The young Civilians arrived in India will be subject to the general rules relating to the Civil Service. His attention will be directed to the acquisition of Native languages and of administrative knowledge, and I have no intention of proposing any such change of system as would interfere with objects of such commanding importance.

60. But I must distinctly express my opinion that it is too common to find young Civil Servants loitering away their time for the first year or two after their arrival; and from personal observation I believe that a bad effect is produced among the Native servants of Government, by witnessing such waste of time on the part of young men who are paid what a Native considers a handsome salary.

61. I, therefore, without hesitation, recommend that young Civil Servants should be called upon to do more work than they are required to do at present.

62. I see no reason at all why law studies should not be pursued at the same time with linguistic, if not administrative, studies.

63. A language cannot be *crammed.* A certain efflux of time is required for the acquisition of a new vocabulary and mode of speech. Two hours a day for a year would probably do more for a student than more than twice two hours a day for six months.

64. I have no certain knowledge of the average daily time spent by young Civilians in learning the Native languages. Immediately before the examination, no doubt there is a good deal of

cramming, and the candidate's whole working day is consumed in reading and conversation with the Moonshee. But probably any young man who resolutely, from the day of his arrival, devoted not more than two or three hours a day to learning one of the vernacular dialects, would attain the appointed standard as quickly as it is now reached by the average of young Civil Servants.

65. At any rate I have no doubt that junior Civil Servants might be fairly required to pursue legal and lingual studies *pari passu*.

66. All young Civilians might perhaps be permitted and invited to attend the law school at Bombay, but those who select the judicial branch with the assent of Government should be compelled to do so.

67. The course of study laid down for them should, I think, be confined to a few branches of law of very great practical importance, and which most demand the assistance of a teacher.

68. I would select the elements of property law, the law of contracts, and the law of evidence, which should be treated with as little technicality, and as much reference to general principle as possible.

69. I would recommend such text-books as Savigny on Possession, Smith on Contracts, Pothier on Obligations, and Mr. Justice Story's popular works. Mr. Norton's Treatise on Evidence is, I believe, well adapted for an Indian law student.

70. Besides these subjects, the Professor should give in lectures a general outline of the several systems of law prevailing in India to be filled up by the student for himself, and I would strongly recommend *lex loci* report of the Indian Law Commission as a subject for private study.

71. It cannot be too often repeated that the Professor would be prudent to abstain as much as possible from the ultra-technical language of English law, and to bear in mind, as a constant warning against that besetting tendency of English lawyers, that every Provincial Judge's decision will have to be recorded in a semi-barbarous Native language which has no equivalents to English law terms and is incapable of expressing scholastic subtleties.

72. After a year or eighteen months, an examination should be held (*not* by the Law Professors), and the students passed for the judicial branch, or sent back for further study.

73. The passed men should be assigned each to a Judge for the purpose of practical training on a system nearly the same as that which is described as prevailing in Germany in an appendix to the Inns-of-Court report before quoted.

74. Mr. Greenwood in his report states (Section 39) with reference to the passed law student in Prussia:—"When successful, the candidate is sworn in as *auscultator* (hearer or apprentice to the law) at one of the inferior tribunals (tribunals of first instance, Kreis and Amto Gerichte). Here, under the instruction of some member of the

College of Judges to whom he is assigned as a pupil, he familiarizes himself with the whole course of judicial business, from the office of simple clerk or writer in the several bureaus up to that of the Judge. He makes digests of the cases before the court with detailed argumentations, and his own conclusions thereupon, for the opinion of the Judges. He makes reports and protocols, and takes down evidence, draws up and registers proceedings, for the use of the court. He acts as clerk to the Magistrates in criminal proceedings, and learns to draw judgments and decrees both in civil and criminal matters. During the whole of the period thus spent, the "hearer of law" is required not to discontinue his theoretical studies, more especially directing his attention to the divergences of the Roman, the Prussian, and the Germanic systems of law. Every quarter the "hearer" is required to make a report, in writing, to the court, of his studies and occupations during that period, and must apply for, and receive from the members of the tribunal, attestations as to the duration of his several occupations, the activity, diligence, and ability, exhibited in the course of them. These certificates must be exhibited when he applies to be admitted to his second examination."

75. I think it unnecessary to pursue this branch of my recommendations into greater detail. I may add, however, that it is during this period of *auscultation*, and not before, that the Civilian would be expected to master the written law which he will have to administer, the system of judicial procedure, and the salient points of Hindoo and Mahomedan law tacitly or expressly recognized by the Provincial tribunals.

76. The expense of my recommendations cannot be exactly estimated. The allowances paid in England to Civilians and examiners (if any) would be inconsiderable. Some extra remuneration to the law Professors, or an extra Professorship, would be necessary if the Civilian students formed a separate class, as I think they ought.

77. A small expense would be advisable for the purpose of providing a selection of law books for each court, and a complete law library ought certainly to be founded in Bombay for the use of the law school. This last would be an expense properly belonging to the University.

78. It remains to consider the case of young Civilians now in the country or presently to arrive. I believe that there are several young men who could be spared without inconvenience for a course of at least six months' legal study. I think in that time they might acquire such an insight into the leading principles of the law of contracts and evidence as would enable them to pursue their studies unassisted.

79. There is the law school at Bombay, in which such instruction is now being given, and I should be happy if my services could in any way be made use of by Government.

80. If desired, I shall be happy to write further on the subject of the two last paragraphs.

*Memorandum by* H. YOUNG, ESQ., *Chief Secretary to the Govt. of Bombay,—dated the 20th October* 1859.

The Chief Secretary believes that the soundness of the conclusions at which Mr. Howard has arrived, and on which he has brought to bear a valuable store of professional learning and experience, will be generally admitted. It is certain that a foundation of legal knowledge should be laid in England; but it seems to the Chief Secretary that the acquirement of such fundamental knowledge might be tested at the general examination for admitting candidates for the Indian Civil Service, and that the great inconvenience of detaining young men already admitted to the Service, for a year in England, to prosecute legal studies (as proposed by Mr. Howard) might be thus avoided, but the year's study in this country cannot, as it seems to the Chief Secretary, be dispensed with. Mr. Howard points out that it could be carried out simultaneously with the study of the vernacular languages, and in this opinion the Chief Secretary fully concurs.

There is no doubt that the first year or two of a young Civilian's residence in this country is not, generally speaking, sufficiently utilized. Much time is wasted; for, however studious a young man may be, he finds application to one subject exclusively, and that by no means an inviting one, for more than three or four hours a day, not only repulsive but unprofitable. There is no doubt that young Civilians have more than ample leisure to work at general jurisprudence, and Mr. Howard's observations as to the subjects which should be selected, and the mode in which their studies should be carried out, seem exceedingly judicious.

The Chief Secretary has reason to believe that Mr. LeGeyt, the Bombay Member of the Legislative Council, is at present engaged in the consideration of a scheme for attaining this very object, which Government had in view when they called for this report from Mr. Howard, namely, the securing of a more certain and a more scientific legal education to those Civilians who are intended to fill judicial offices in India. He begs therefore to suggest that this report, with the former proceedings on the subject, be sent to Mr. LeGeyt, for any observations with which he may be good enough to favor Government.

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*Minute by the Right Hon'ble the Governor of Bombay, subscribed to by the Hon'ble Mr. Malet,—dated 21st October* 1859.

Mr. Howard has favored us with a very interesting and valuable paper in answer to our enquiry,—what is the best mode of securing to our young Civilians such an amount of legal instruction as shall qualify them for the judicial bench under the altered circumstances in which our Mofussil Judges will be placed by the spread of legal education and by the formation of a highly educated Native bar?

I certainly do not feel myself competent to review the whole of Mr. Howard's recommendations, especially those which relate to the studies to be pursued in England. I agree with him that the course of study should be submitted to Sir Richard Bethell, or to some other high legal authority in England, who may be willing to give his attention to it, and in whom Her Majesty's Government place entire confidence.

I may venture also to express my entire concurrence in Mr. Howard's remarks upon the insufficiency of any legal system existing in India as the basis of scientific legal study, and in his preference for the study of the Roman civil law over that of England. I think there can be no doubt that "the time and labor required for the thorough study of the English law, in consequence of its unsystematic character, are very great, far more than a young Indian Civil Servant could devote to it, and a superficial study of so vast a fabric of legal doctrine would, in the majority of cases, be positively mischievous to him"; equally true is it (as observed by the Committee of the Council of Advocates, Edinburgh, 1854, quoted by Mr. Howard) that "the (Roman) civil law constitutes the basis of nearly all the laws of Europe." A code of which this can be said, and which has maintained its authority through so many centuries, and through so many revolutions and vicissitudes, and among people so different in character and in civilization from each other, and from the Roman world in the days of Justinian, must surely be a fitter subject of study in the abstract, than a system which, whatever its excellencies in the eyes of Englishmen, is confessedly founded upon precedents, and not upon principles, and which, to quote again from Mr. Howard's letter, "retains many feudal and other technical doctrines which must be investigated historically before they can be understood, and thus inflicts upon the student much labor, which for the training of an Indian Judge would be almost or quite useless."

With regard to the studies and judicial training which are to be carried on in India, I may be permitted to express my general concurrence in Mr. Howard's remarks.

I do not see why *all* young Civilians should not be compelled to attend the law school at Bombay, especially if a separate class is instituted for them. The only drawback that I see to this arrangement is, that it will necessitate the residence of a number of young men at Bombay, where they will be apt to encourage each other in habits of extravagance.

I have no doubt that the course of study, choice of books, &c., recommended by Mr. Howard, are well calculated for the object in view; his warning against *ultra-technical* phraseology will, I hope, not be thrown away upon our law Professors.

The Prussian system of attaching passed students to one of the inferior tribunals could hardly be carried out in its integrity in this country. It is, moreover, desirable that all young Civilians should go for a year or two (at least) into the Revenue Department, where they

become familiarized with the people and with a state of society so different from that which they have been accustomed to at home. This I should consider a more essential part of the training of a future Judge than the knowledge of forms and of the actual working of a court which is acquired by the Prussian *auscultators*. These, however, are not wholly to be neglected, and after a year or two's probation with the Collector and Magistrate, I think it would be a good plan if the candidate for judicial employment were promoted to the now abolished office of Registrar to a Civil and Sessions Judge.

The experiment of collecting the young Civilians at the Presidency with a view to their attending law classes may be tried at first upon a limited scale. It may be notified that any young gentlemen who are anxious to qualify themselves for judicial employment may apply to be stationed at the Presidency for the purpose of attending law classes, and that those who produce satisfactory certificates shall have a preferential claim to be employed in the judicial branch.

Mr. Howard's very handsome offer to afford every assistance in his power in carrying out this experiment may be accepted, and the thanks of Government conveyed to him for it.

The foundations of a complete law library for the use of the law school should be laid at once. Mr. Howard may be requested to favor us with a list of such books as would be required in the first instance. The library would be increased as the want of additional books of reference, &c., was felt.

The Chief Secretary has suggested that Mr. Howard's proposal should be sent to Mr. LeGeyt, the Bombay Member of the Legislative Council, for such observations as he may desire to make. This course appears the more advisable, as Mr. LeGeyt is stated to be engaged in maturing a scheme for the same purpose. His experience of the working of the Judicial system in this Presidency will no doubt assist him in this, and he will also remember that the legal education which is now attainable by Natives at this Presidency, and which will soon produce a great change in the character of the Native bar, requires that a corresponding improvement should take place in the training of our Mofussil Judges.

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*Minute by the* Hon'ble Mr. Reeves,—*dated 4th November* 1859.

I fear I may be thought to have detained these papers somewhat longer than necessary, but as my sole desire has been to give them due consideration, I trust that no inconvenience will result.

Mr. Howard's proposals are the following:—

Two years' study of law is to be required from young men designed for the judicial branch of the Civil Service, of which one year is to be passed in England after appointment, consequent on the competitive examination; and no young man is to be permitted to

come out to India until he has passed a strict examination to which he should be subjected at the end of the year.

Mr. Howard would excuse a candidate for the Judicial Department from this year's study, provided he can pass the required examination without it.

The examination is to be held in London.

The other year, or a longer period of study, is to be spent in India, and is to be followed again by examination.

And, after this, the judicial candidate is to be attached to the office of a Judge for the purpose of acquiring a practical knowledge of his study.

2. Concurring generally in these proposals, I am of opinion that the course of legal study should be made compulsory on all candidates for civil employment in this country. I would point to the great extent of judicial work performed by Magistrates, Collectors, and Political Agents: to all these officers the knowledge of sound principles of law insisted on by Mr. Howard appears to me to be essentially necessary to ensure the satisfactory performance of their duty, in addition to which it will afford to young Civilians the most admirable mental discipline, it will furnish them with a power of self-improvement that cannot fail to produce men capable of coping with questions of any kind.

3. I agree with the Right Hon'ble President in considering that Mr. Howard's views on the nature and course of legal study to be pursued in England should, as suggested by that gentleman himself, be submitted to Sir Richard Bethell. In discussing this part of the subject, Mr. Howard seems to me to reason with great force, as well as with characteristic zeal.

4. I have received from Mr. Anderson, the Judicial Secretary, a suggestion which I consider of great practical value. He remarked that Lord Macaulay's scheme for the preparation of Civilians for India was not adopted in its integrity by the Home Government, and that it may now be taken advantage of to a further extent. His Lordship, it will be remembered, intended *first*, a competitive examination; *second*, a two years' course of study with an examination at the end of it, which was to determine the rank of the candidates for employment. Mr. Anderson's opinion (and I concur in it) is this, that, although it would be unfair and undesirable to rank the students, even supposing them to be specially designed for judicial duties according to the result of the examination in law, yet there ought to be some incentive to the acquisition of *something more* than a minimum of legal knowledge; he therefore proposes that the marks obtained in the competitive examination should be carried on to the one in law, and that the aggregate result should decide the rank of future Civilians.

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5. Mr. Howard's remarks at paragraph 60 of his letter are perfectly true. Young Civilians too generally loiter away their time for the first year or two after arriving in this country. We are not allowed to make any official use of them, and the study of the vernacular languages is effected by a few months' cramming. The present proposals will at once terminate this evil, for newly arrived Civilians will, under Mr. Howard's recommendation, find their time well and fully occupied. They will be required to study the Indian languages and jurisprudence *pari passu*.

6. The course of study in this country should embrace such branches of law as are likely to be of the most practical service; and the elements of property law, the law of contracts, and the law of evidence, appear judiciously recommended by Mr. Howard. The lectures, also, on systems of Indian law, as well as the private study, which he proposes, are, I conceive, equally well chosen as already remarked. I would make these studies compulsory on all young Civilians who may be hereafter appointed. I quite approve of the examination which Mr. Howard would hold in this country as a test of the Civilian's fitness for entering upon the active duties of his profession. This test may be usefully combined with our departmental examinations, which are susceptible of much improvement; it would, in fact, supersede a great portion of them.

7. I differ from Mr. Howard as to the employment of Civilians at the conclusion of the course of study in India. Practice, as "auscultators," I cannot conceive to be advisable. When a system of law, full of technicalities and difficulties, has to be encountered, and a highly artificial state of society exists, such practice I can easily suppose to be necessary; but that is not the case here; our law is of the simplest kind, the state of society is wholly inartificial; there are no legal details of any difficulty to overcome; but it is of vital importance that a candidate for public employment, whether he wishes to be a Judge, Collector and Magistrate, or Political Agent, should become thoroughly well acquainted with the manners and customs of the people, as well as with our Revenue and Police systems; and I contend with much confidence, that this cannot be effected in any manner so well as by active service as Assistant Collector and Magistrate, or as a Political Agent. I may indeed assert that the object cannot possibly be effected in any other manner. As Assistant Collector and Magistrate, the young Civilian will have his time well occupied in deciding numerous cases of a simple kind, both civil and criminal, and in preparing others of a grave and important character for the judgment of higher authority, and his powers, discretionary and legal, will be increased with his experience. This affords all the judicial practice that is necessary in this country, while the acquirement of that knowledge of the Native character and the institutions of the country, which is essential to the formation of a good Judge or a good Magistrate, is secured in the fullest possible degree.

8. Another consideration which must have weight is this, that we cannot afford to throw away a well-qualified available Civilian,

and the employment of our young men as "auscultators" would virtually amount to the loss of their services for a given time.

9. After serving for a given number of years, say five, as an Assistant Collector and Magistrate, I would appoint any young Civilian who might deliberately make choice of the Judicial Department as Assistant Judge. I observe that the Right Hon'ble the President is disposed to revive the office of Registrar, and I see that Mr. LeGeyt has included that office in his Bill for the judicial machinery of this Presidency. But I regard this as a step backwards. The very name of this abolished office is fanciful and unmeaning; no one unacquainted with the secret would have supposed that the Registrars formerly held any judicial powers, or that they did any thing but register deeds and draw fees for so doing. I think it far better to retain the intelligible and appropriate name of Assistant Judge. There can be no question that a young man who has passed the competitive examination in England, and gone through the course of two years', or two years and a half, study chalked out by Mr. Howard, and additionally employed himself as Assistant Collector and Magistrate for five years, will be amply qualified to take his seat as a Judge, and that he will do credit to the Government. Such an officer should be made the most of: he should be employed as a Judge, and with this office he should receive the title and dignity of Judge, and not to be designated by a title which conveys no meaning but that of an amateur.

10. I fully concur in the proposal of the Right Hon'ble the President for giving immediate effect to Mr. Howard's offer to aid some of our junior Civilians in the study of law, but I venture to suggest that the study should be made compulsory on all those who can be spared, and I believe these are not a few; a course of six months' application, or longer, if possible, with some stimulus to exertion in the way of promise of promotion in the event of industry and proficiency, could not fail to be of immense benefit to those young men.

11. I further coincide in His Lordship's desire that a complete law library should be provided without loss of time.

12. I have only one remark more to make. The Chief Secretary has suggested that he has reason to believe that Mr. LeGeyt, Member of the Legislative Council, is engaged in the consideration of a scheme for attaining the object which this Government had in view in referring to Mr. Howard, and, therefore, that the report from Mr. Howard and former proceedings should be handed over to Mr. LeGeyt for his remarks; and the Right Hon'ble the President is disposed to adopt this course. I trust, however, I shall be pardoned for objecting to anything calculated to delay the transmission of Mr. Howard's very able and excellent report to Her Majesty's Secretary of State for consideration. Mr. Howard's report is complete and convincing; and without meaning the slightest disrespect to Mr. LeGeyt, I feel assured that no information can be expected from him that will add anything to the opinions of that gentleman and Sir Richard Bethell,

on the all-important point of the legal study. It is manifest that a part of the study must be in England and a part in India, and it is equally clear that the Secretary of State will, with the report of Mr. Howard before him, and the further opinion of Sir Richard Bethell, be placed in possession of information that will go far to enable him to come to an early decision on the question of English study, if not on the whole question. Any young men who come out to this country without the qualifications which it is now desired to give them, must enter this country at a great disadvantage; the sooner therefore the Secretary of State can be induced to prevent their coming out under such disqualification, the better. I think therefore that the proceedings should be sent home at once.

13. Copies of the papers can be sent to Mr. LeGeyt for his remarks, which, as they will only affect the employment of young men in this country, may very safely be left for future consideration.

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*Minute by the Right Hon'ble the Governor of Bombay.*

I am glad to find that there is so much coincidence of opinion between my Hon'ble colleagues and myself on the subject of Mr. Howard's valuable memorandum.

I did not intend that its transmission to the Secretary of State should be delayed, but as I understood that a Bill for providing that young Civilians intended for judicial employment should have some legal training was under preparation, and as this Bill might be brought forward before we could receive an answer from the Secretary of State, I thought it was desirable that the Member of the Legislative Council for Bombay should be placed in possession of Mr. Howard's plan, and I thought it also desirable that it should be canvassed, and that we should be placed in possession of any objections which may be urged against it by those who are about to legislate on the subject.

The only points upon which there is any degree of difference of opinion between my Hon'ble colleague, Mr. Reeves, and myself, are upon the revival of the office of Registrar, and the immediate compulsory attendance of all junior Civilians at the proposed law classes.

With respect to the first, I think it is of no great consequence whether a young Judicial Officer is called a Registrar or an Assistant Judge. There are already two grades of Assistant Judges, those at detached stations, and those who are at the Zillah Adawluts. If the judicial service is to be in future more separated from the revenue and magisterial branch than it has hitherto been, it will be necessary to multiply the latter class of Assistant Judges, and to have one attached to every Zillah court. This would be reverting to the old practice, and it seemed to me that it would be as well to revert to the old designation, which marked the difference of rank between the apprentice Judge and the master more clearly than the present one; but, as I said before, I attach no particular importance to the name.

With regard to the compulsory attendance of junior Civil Servants upon the law lectures, I think that it will be advisable to wait until we know that the proposed course of study is approved by the Secretary of State. We must also consider how far this arrangement is to have retrospective effect. It is not desirable that a large number of young men should be brought down to the Presidency at the same time. The effect of ordering all young Civilians, who have not passed their first departmental examination, for instance, to attend the law classes, would be to congregate a large number of men at the Presidency. By making it optional in the first instance (not restricting it to those who have not passed the first departmental examination), we shall probably secure the attendance of all those who are likely to take an interest in the study of law, while we avoid the dangers which are to be apprehended from the other course. If, however, a sufficient number of volunteers to form a law class is not forthcoming, I should not object to order a certain number of young men, say a dozen at a time, to attend a course of legal study.

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*Minute by the* Hon'ble Mr. Malet,—*dated 5th November* 1859.

The only important difference of opinion that appears at present to exist is whether it would be better to revert to the old appointment of Registrar, or to continue that of Assistant Judge. I believe that the exigencies of business led to the supersession of the old appointment by that which at present exists. Young men, who have been some time in the country, are appointed Assistant Judges, and are immediately able to relieve the Judges of an important portion of the work of the Zillah : at first, of course, they take the minor cases, gradually progressing, until, as Assistant Judges for detached stations, they become practically independent Judges. It seems to me that, with the education now contemplated, this course is better calculated to train men for the highest judicial functions than that of appointing them Registrars, where their judicial talent would not be practically exercised to the same extent, and where, from having less to do, they would probably become the personal Assistants of the Judges, or be made prosecutors, or be employed in some other mode not so practically useful as at present.

I quite concur with theRight Hon'ble the President that these papers should be sent to the Legislative Member for Bombay for the reasons stated, but I hope that they may be sent to the Secretary of State for India without loss of time, as the matter is of great importance and of very urgent pressure.

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*Minute by the* Hon'ble Mr. Reeves,—*dated 5th November* 1859.

The question of the office of Registrar and Assistant Judge will, I doubt not, receive full consideration when it again comes before this Government.

I think the Judicial and Revenue Secretaries should ascertain what young Civilians are available for taking advantage of Mr. Howard's proposal for giving them legal instruction in Bombay.

I have only to add my hope that these proceedings may be forwarded to the Right Hon'ble the Secretary of State by the next mail.

The Right Hon'ble the President has, I observe, addressed the envelope containing these papers to Mr. Anderson, and I am under the impression that, as the discussion belongs to the Judicial Department, a transfer ought to have been made accordingly at the outset. I propose that a transfer be made now.

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*Further Minute by the Right Hon'ble the Governor of Bombay, subscribed to by the* Hon'ble Mr. Reeves,—*dated 7th November 1859.*

I have already said that I think it is not important whether young gentlemen on their first appointment to the Judicial Department are called Registrars or Assistant Judges. I preferred the former as the less pretentious designation, and because there are already two classes of Assistant Judges, those who are at detached stations, and those who are at the same station as the Judge. I do not think that any amount of study can absolutely qualify a young man for high judicial functions; some experience must be gained in a subordinate capacity. The designation of this probationary grade is of comparatively little consequence. Registrar is something between *Auscultator* and Assistant Judge.

I entirely agree that the papers should be sent Home by the next mail; they should be transferred as proposed to the Judicial Department.

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*From the Government of Bombay, to H M.'s Secretary of State for India, London, No.* 30,—*dated 26th November* 1859.

We have the honor to submit, for your consideration and decision, an extract, as per margin, of the Proceedings of this Government, containing a proposal to provide a course of legal study for Civilians designed for the judicial branch of the Service.

*Civil Servants.*

Correspondence relative to the necessity of supplying the want of legal knowledge in the judicial branch of the Civil Service.

Judicial Consultation, 1859, Nos. 8030—45,

2. For our opinion on this important question, we beg to refer you to the several minutes which accompany the Proceedings.

3. We beg to add, in conclusion, that copies of these papers have also been forwarded for the consideration of the Government of India.

*From* R. B. CHAPMAN, ESQ., *Under Secretary to the Government of India, Home Department, to the Secretaries to the Governments of Fort St. George, Bengal, the N. W. Provinces, and the Punjab,—Nos.* 403, 427, 404, *and* 405,—*dated* 25*th February* 1860.

I am directed to transmit, for the information of the Government of——,* the accompanying copy of a letter from the Government of Bombay, No. 76, dated the 26th November last, and its enclosures, on the subject of a proposal to provide a course of legal study for Civilians designed for the judicial branch of the Service, and to request that the Government of——* will favor this Government with an opinion thereon.

* As addressed.

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*From the* RIGHT HON'BLE SIR CHARLES WOOD, BART., G. C. B., *Secretary of State for India, to His Excellency the Right Hon'ble the Governor General of India in Council,—No.* 45, *dated, London, the* 25*th May* 1860.

I herewith transmit a copy of correspondence as per margin, on the subject of the legal education of Civil Servants in the judicial branch of the public service in India.

Letter from Government of Bombay, with enclosures, dated 26th November (No. 30) 1859.
Letter to the Secretary, Civil Service Commission, 30th January 1860.
Letter from ditto, 13th April 1860, with enclosures.
Letter to the Government of Bombay, dated 25th May 1860, No. 15.

2. Her Majesty's Government are very desirous that every facility should be afforded to the young Civilian, on his arrival in India, for carrying on, simultaneously with his studies in the Native languages, the course of legal education which he has commenced in England; and they request that you will take the subject into your early consideration with a view to adoption of such measures as may in your judgment be the best calculated to promote that important object, reporting the same for the information of Her Majesty's Government.

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*From* J. A. F. HAWKINS, ESQ., *Secretary, Judicial Department, to the Secretary, Civil Service Commission,—dated, India Office,* 30*th January* 1860.

I am directed by the Secretary of State for India in Council to request that you will lay before the Civil Service Commissioners the accompanying correspondence* which has been received from the Government of Bombay, on the subject of the legal education of Civil Servants in the judicial branch of the public service in India.

It will be seen that the Government of Bombay, acting on the recommendation of Mr. Howard, a barrister of the Supreme Court and Director of Public Instruction at that Presidency, propose to give their Civil Servants, on their arrival in India, a certain amount of legal training preparatory to their entering upon the more important functions of the judicial office. The point at which that training should commence in India must depend, in a great measure, upon the extent of proficiency which candidates for the Indian Civil Service are required to

* Letter from Bombay, dated 26th November (No. 30) 1859, with enclosures.

attain in this country to qualify them for passing the examin prescribed by existing rules, in the general principles of jurispru and in the elements of Hindoo and Mahomedan law.

Under these circumstances, Sir C. Wood desires me to re that you will move the Commissioners to favor him with the req information in regard to the general nature of the examination candidates will be required to pass in the above-mentioned subjects he will be glad to be furnished, at the same time, with the vie the Commissioners on the recommendations of Mr. Howard as nature and extent of legal training necessary for Civil Servants int for employment in the judicial branch of the Indian Service.

I am instructed to enclose, for the information of the Co sioners, a copy of the rules prescribing and regulating the exam to be passed by junior Civil Servants under the Government of to qualify them for promotion to the more advanced grades of Rules similar in substance are in operation in all the Preside India.

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*From* J. G. MAITLAND, ESQ., *Secretary, Civil Service Commission, to the S Judicial Department,—dated 13th April* 1860.

I am directed by the Civil Service Commissioners to ackn the receipt of your letter of the 30th January, enclosing copy of corr ence received from the Government of Bombay, on the subjec legal education of Civil Servants in the judicial branch of the service in India, together with copy of the rules regulating the e tion to be passed by junior Civil Servants under the Governm Bengal, to qualify them for promotion to the more advanced gr service, and requesting information in regard to the general na the examination which candidates will be required to pass principles of jurisprudence and the elements of Hindoo and Mah law, with the opinion of the Civil Service Commissioners up Howard's recommendations, as contained in the correspondenc mentioned.

In reply, the Commissioners propose to state, in the first place, the course which has, in fact, been pursued. The extent to which Mr. Howard's views, so far as they relate to legal training in this country, are being carried out will then be apparent, and it will only be necessary for the Commissioners to explain very shortly the reasons which prevent them from giving an entire assent to his proposals.

The intention of Lord Macaulay and his colleagues was, as Secretary Sir Charles Wood will be aware, to frame for the first examination (that by which admission to the Service was to be obtained) a scheme embracing the ordinary subjects of a liberal English education, and, at the same time (with exceptions for which reasons were assigned), not going beyond those subjects. Law and jurisprudence, therefore, as well as the vernacular languages of India and the history and geography of that country, were necessarily excluded, and were to constitute (with political economy) the subjects of the further examination by which, after an interval of one or two years, seniority in the service was to be determined.

Circumstances, which it is unnecessary to mention, led to the suspension of that part of the original plan which related to the further examination, and the candidates selected by open competition in 1855, 6, and 1857, probably left this country, as Mr. Howard states, without ng had the benefit of any legal education.

The examination of July 1858 was conducted by the Civil Service missioners at the request of the Earl of Ellenborough, and by the ations for that year, provision was made for a further examination e selected candidates. As, however, it was considered desirable delay their departure beyond the close of the year, the further ination was confined to the elements to Hindoostani and the history ny of India.

The regulations of 1859 were framed after a correspondence en the India Office and the Civil Service Commissioners, which be found in the appendix to the fourth report of the Commisrs. By these regulations, the further examination of July next nclude Sanskrit and the vernacular languages (each candidate required to take one Oriental language, and permitted to take e history and geography of India, political economy, and "the l principles of jurisprudence, together with the elements of o and Mahomedan law." For the legal subjects 1,000 marks are ed; to the others 1,850 in the whole, and of the last-mentioned ate, 850 are appropriated to Oriental languages. On the author- persons eminently well qualified to judge, whose opinions are t length in the correspondence last referred to, the Commissioners it as extremely desirable that the study of those lan- should be commenced in this country, and they cannot wish that ld be considered as subordinate even to the acquisition of legal dge; but, with respect to the other subjects (the history and phy of India and political economy), they have no hesitation in saying that a moderate acquaintance with them should be accepted as sufficient.

Reverting to the legal portion of the further examination, the Commissioners have to add that the following works have been mentioned to the selected candidates as likely to prove useful to them:—

Strange's Hindoo Law.
Macnaghten's Hindoo Law.
„ Mahomedan Law.
Macpherson's Procedure.
Sandar's Institutes.
Morley's Digest.
Blackstone's Commentaries.
Elphinstone's History.
Mill's History, with Wilson's Continuation.
Kaye's Afghan War.
Thornton's Geography and good Maps.
Re-print of part of Macnaghten by Wilson.

The candidates were, at the same time, warned that the examination would not necessarily be limited to the particular books which were recommended.

Another step from which the Commissioners venture to hope good results, has since been taken. In their letter of 1st Septe 1858, the Commissioners quoted a passage containing Sir Charles W opinion as to the species of legal education which it would be desi that Indian Civil Servants should receive. "No qualification," he "is so necessary to them, whether they be employed in the ju branch of the Service or in the combined duties of Collector and M trate, as a thorough knowledge of the principles of law, combined w practical acquaintance with the mode of conducting civil a crim suits." Fully concurring in this view, and believing that the pra acquaintance referred to could not be acquired without attendan courts of justice, the Commissioners addressed to the selected candi the enclosed circular, marked No. 1. The notes of cases which sent in as required at the close of January were placed in the hand Mr. Macpherson, whose name is no doubt known to the Secret State for India as that of the author of an able treatise, entitled New Procedure of the Civil Courts in British India not establish Royal Charter."

From the reports which Mr. Macpherson was good enou make, the Commissioners were able to send to each candidate a comment upon the mode in which he had executed the task im upon him, and all have been instructed to send additional notes the close of the present month. How much has been gained in case the Commissioners will be unable to judge until the *viv* examination announced in the first circular has taken place although it would be unwise to form any very high expectations the limited amount of attendance which has been required, th convinced that the plan is a good one, and they hope that it may practicable to carry it out hereafter on a more extended scale.

Passing next to the consideration of Mr. Howard's valuable su gestion, the Commissioners observe that, in his third paragraph, he states his opinion that two years ought to be spent by gentlemen designed for the judicial branch of the Service in the study of law as a science. Of these two years, one, it is proposed, should be passed in England in the study of general jurisprudence, the candidates being allowed during that period a moderate sum for their maintenance, &c., and being required to pass an examination at its close. An exception to the rule requiring the year's study in this country is subsequently proposed in favor of those whose answers at the examination for appointments show that they have attained the requisite proficiency in jurisprudence, as well as of those who have obtained University honors in law or jurisprudence. Mr. Howard then proceeds to consider the sense in which the term "jurisprudence" is to be understood, and, after stating the objections which exist to other systems, he arrives at the conclusion that the Roman civil law, as a branch of general jurisprudence, must be adopted as the basis of juristic study. In later para-

graphs he shows the extent to which his requirements would go, suggesting for a general view of English law Blackstone's Commentaries, and for jurisprudence and civil law the Institutes of Justinian, with some selected portions of the Pandects, to be studied with the aid of a commentary. An acquaintance with some recognized treatise on modern civil law, with some of the principal divergences between cvil and English law, and with the fundamental principles of the conflict of laws of legal hermeneutics, is also to be required; and it is added that the examination should not be based on any particular treatise or commentary, save, of course, the prescribed texts of Roman law, but on civil law and jurisprudence as a subject.

Upon this portion of Mr. Howard's plan, the Commissioners have to offer the following remarks :—

In the first place, they are glad to observe the great extent to which Mr. Howard's suggestions have been anticipated. The study of law and jurisprudence has been made obligatory, two of the works recommended have been mentioned to the candidates, provision has been made for their expenses while prosecuting their studies, and a test examination is to take place at the interval of a year after that by which the candidates were originally selected.

The principal points on which the Commissioners are unable to agree with Mr. Howard are the following :—

1. The Commissioners do not think that, in the present state of general education, it would be desirable to include law among the subjects of the first examination. They have already referred to the principle by which Lord Macaulay and his colleagues were guided in framing their scheme, and the maintenance of that principle appears to them important.

2. From their general experience, the Commissioners would be reluctant to take, in lieu of an examination conducted under their own directions, any record or certificate of honors obtained under other circumstances. It will be unnecessary for them to express the sincere respect which they entertain for the learned bodies entrusted with the duty of granting such certificates; but any attempt to distinguish those which should, from those which should not, be regarded as satisfactory substitutes for examination, would be so difficult and so invidious that they have thought it necessary to adopt for their own guidance the general rule indicated above. They are also of opinion that University honors, though proving the scientific knowledge of law possessed by the candidate, could not be taken as guarantees that he has had that practical training which they regard as at least equally important, under the special circumstances of the case.

3. Entertaining this opinion as to the value of practical training, the Commissioners are disposed to think that Mr. Howard requires too much of scientific knowledge. Undoubtedly, the authorities which he cites support him in his view as to the general importance of a thorough acquaintance with the civil law; but the very peculiar position of a member of the judicial service in India, where, as Mr. Reeves observes in

his memorandum, "the law is of the simplest kind, the state of society wholly inartificial, and there are no legal details of any difficulty to overcome," appears to the Commissioners to require a special and somewhat different preparation. As to the elements of the civil law there is no question, and the Institutes of Justinian have been, as above mentioned, recommended by the Commissioners; but the further time which the candidate may be able to devote to his legal education should, they think, be divided between the study of works relating either to the law of England, as Blackstone's Commentaries, or to the systems with which he will be brought into contact on his arrival in India, and a careful observation of the actual proceedings, civil and criminal, in our courts of law.

Upon the portion of Mr. Howard's plan which relates to the course of study which should be pursued in India, the Commissioners feel it less necessary that they should give an opinion. They notice, however, in his paper, as well as in those of members of the Government who have commented upon it, complaints of the amount of time wasted by the younger Civil Servants after their arrival in India. It is to be inferred that the knowledge of Oriental languages, and the "slight tincture of legal education" acquired by the Civil Servant under the system which preceded that now established, were neither sufficient to qualify him for immediate employment, nor to give him an interest in his studies sufficient to counteract the temptations to idleness by which he was assailed. If, as may reasonably be hoped, this should not hereafter be the case, the Civil Servant will, in fact, enter upon his duties almost as early as heretofore; and he will enter upon them with a better prospect of success, because his time, instead of having been, according to Mr. Howard's phrase, "loitered away" in India, will have been spent in completing his education at home.

Upon the regulations for the examination of junior Civil Servants in Bengal on promotion to the more advanced grades of service, the Commissioners have only to observe, that they appear to be exceedingly well adapted for their purpose, and that one of the tests enjoined, that of framing judgments upon cases actually decided and placed before the Assistant when under examination, is evidently a test of legal training,—of the power of appreciating and comparing evidence, and of other similar qualifications,—more than of the theoretical knowledge possessed by the candidate. The regulations, therefore, may be appealed to in support of the view taken by the Commissioners.

The Commissioners have to repeat, in conclusion, that they trust it will not be understood that they consider what has already been done as sufficient. They will give their best attention to any suggestions of improvements, and they will be glad to consider the plan referred to in the correspondence as in course of preparation by Mr. LeGeyt, if communicated to them. In any event, they hope, as soon as the results of the further examination are known, to place the Secretary of State for India in Council in a position to estimate, as accurately as the nature of the case will allow, the results of the measures which have already been adopted.

*From the* RIGHT HON'BLE SIR CHARLES WOOD, BART., G. C. B., *Secretary of State for India, to His Excellency the Right Hon'ble the Governor in Council, Bombay,—(Judicial) No. 15, dated, London, the 25th May* 1860.

Having referred your letter, dated 26th November (No. 30) 1859, and its several enclosures, relative to the legal education of Civil Servants designed for the judicial branch of the public service in India, for the consideration and report of the Commissioners, to whom the examination of all candidates for the Civil Service in India is committed by the Act 21 and 22 Vic., Cap. 106, Sec. 32, I have now to communicate to you the reply of the Commissioners under date the 13th April, and to express my entire concurrence in their views on that important subject.

2. I approve of your proposal to provide a course of legal study at Bombay for Civilians intended for the judicial branch of the Service, and request that the regulations which you may lay down for the attainment of that object may be so framed as to harmonize with those followed by the Commissioners, and to promote the advancement of the students in that course of legal study the foundation of which has been laid in England.

3. In framing these regulations, you will carefully attend to the remarks of the Commissioners as to the practical tendency of the training to be given to young Civilians, whose duty it will be to dispense justice to a people, the introduction among whom of a complicated system of judicial administration is specially to be avoided. You will submit the regulations, when prepared, for the information of Her Majesty's Government.

4. You are requested to convey to Mr. Howard the acknowledgments of the Secretary of State for India in Council for his valuable reports of the 6th September and 17th October last.

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*From* W. GREY, Esq., *Secretary to the Government of India, Home Department, to the Secretaries to the Governments of Bengal, the North-Western Provinces, and the Punjab,—Nos.* 1254, 1403, 1404, *dated 7th July* 1860.

In continuation of the correspondence forwarded with the letter from this Department, dated the 25th February last, regarding the proposal of the Government of Bombay to provide a course of legal study for young Civil Servants after their arrival in India, I am directed to transmit copy of the letters noted on the margin, and to request that an early reply may be made to my previous communication.

Letter from the Secretary in the Judicial Department at the India Office, to the Secretary, Civil Service Commissioners, dated 30th January 1860.
Reply to the above, from the Civil Service Commissioners, dated 13th April 1860.

*From* W. GREY, Esq., *Secretary to the Government of India, Home Department, to the Secretary to the Government of Bombay,*—No. 1405, *dated 7th July* 1860.

With reference to your letter marginally* noted and to the Secretary of State's Despatch to the Bombay Government, No. 15, dated 25th of May, I am directed to request that if the regulations by which it is proposed to provide a course of legal study at Bombay for young Civil Servants have been prepared, a copy of them may be forwarded to this Government. If these regulations have not yet been drawn up, I am to request that you will be good enough to intimate when it is expected that they will be ready.

* No. 76, dated 26th November 1859.

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*From* A. R. YOUNG, Esq., *Secretary to the Government of Bengal, Judicial Department, to the Secretary to the Government of India, Home Department,—No.* 3439, *dated 28th June* 1860.

I am directed to forward, for submission to His Excellency the Governor General of India in Council, a copy of the papers noted on the margin, having reference to the plan which was proposed by the late Lieutenant Governor of Bengal for the judicial training of junior Civil Servants, and to which the sanction of the Government of India was conveyed in your letter, No. 868, dated the 28th April 1859.

Letter from the Register of the Sudder Court, No. 1401, dated 8th November 1859, with enclosures.
Ditto from ditto, No. 820, dated 1st instant.

2. Mr. Halliday's proposal was, that a certain number of junior civil officers, who were already employed as Assistants to Magistrates and Collectors, should also be appointed as Assistants to Judges, with a view to their being trained for judicial employment, and at the same time to their assisting the Zillah Judges in the performance of their own duties.

3. It will be observed, from the enclosure of Mr. Lawford's letter, No. 1401, that the majority of the Judges of the Sudder Court, as well as some of the Zillah Judges who were consulted, doubted whether an attendance at the Judge's court during the first year or two of their official career would prove either a benefit to the Assistants themselves or a service to the Judge, as they would not, as contemplated by Mr. Halliday, either sit as Assessors in the trial of cases, unless Regulation VI. of 1832 was in the first instance amended, or assist in the preparation of cases for the Judge, who, under the new Code of Civil Procedure, is required to do everything himself.

4. But they were almost unanimous in thinking that the legal education of junior Civil Servants is at present defective; and as a means of remedying this deficiency, two of the Judges, Messrs. Trevor and Samuells, advocated that some material alterations should be made in the system of instruction now pursued in the College of Fort William.

5. But as the Governor General in Council had been pleased to express his approval of the measure proposed by Mr. Halliday, and to

sanction its introduction, and as it seemed also to the Lieutenant Governor to promise some advantages in the training of young Civil Servants, the Court were requested to re-consider the matter, and to report what practical course of action they as a body would recommend with advertence to the present state of things and to the law as now in force.

6. The Court's recommendations, in consequence of this second reference, are set forth in Mr. Lawford's letter of the 1st instant, and are briefly as follows, *viz.*:—

That the junior Civil Servants, whilst studying the Native languages in the College of Fort William, should also attend law lectures, to be delivered by well qualified Professors on the written law of the country, as gathered from the regulations and the Hindoo and Mahomedan authorities; and that they should also attend the higher courts at the Presidency, such attendance being customary with law students in Europe.

That examinations on the subjects thus studied should be held from time to time, and that no Civil Servant should be allowed to leave the College until he had passed one or more of these examinations, his stay in the College being thus prolonged to eighteen months or even to two years.

That on passing out of College, the Civil Servant should be sent into the Mofussil, as at present, as an Assistant to the Magistrate and Collector, to learn the important duties of those offices; and that, at the half-yearly examination of Assistants, his legal knowledge should also be tested by questions being put to him in those branches of law which he had previously studied.

That, after passing according to the second standard, he should attend the Judge's court at least twice a week, and report on the cases submitted for trial, and that the Judge should give the Assistant, once a fortnight, a civil suit that had been decided, to write a judgment on, and should carefully go over the case with him, pointing out any errors into which he might have fallen; that, at the end of every six months, the Judge should report on the qualifications, abilities, and progress of the young officer, who should continue subject to this training until appointed to the Joint Magistracy of a Sudder station.

7. The Lieutenant Governor desires me to observe that he agrees in the Court's proposal as to the legal instruction of students in College, and desires to support it. The duty would naturally fall to the Professor and Assistant Professor of Law, but some increase would be necessary to their emoluments.

8. As there is at present a great dearth of young Civilians, and as the supply does not keep pace with the retirements and casualties, the detention of students in College for any considerable time would not, in the Lieutenant Governor's opinion, be convenient, unless the supply of young Civilians becomes fuller. But the benefit would counterbalance this inconvenience.

9. The Lieutenant Governor does not think that the plan recommended by the Court, for continuing the legal education of Civilians

after their entering upon their official duties in the Mofussil, would answer. In effect, it would constitute the Zillah Judge a Law Professor in the practical branch; and the time of the Judges is already most fully occupied in their proper and all-important duties. Every Judge who gave one day, or any great part of one day, once a fortnight, in order to act as law tutor to a young man, would feel that thereby the judicial business of his district, on which its well-being depends, suffered, and that to teach a young man theoretically how to decide cases, for which scholastic employment he might, though a good practical Judge, not be well qualified, was a waste of his time.

10. In the great pressure of work everywhere at present, the entire loss of the Assistant's official services, whilst he is learning a Judge's duty in theory, would be a serious inconvenience.

11. It is one thing to convert a working man in a high post for the time being, into a law tutor to another man who ought to be, and is, paid for being a working man too in a lower post,—which is the recommendation of the Sudder Judges; and it is another thing to place under a working man in a high post a young man as Assistant, whose work under his chief's check and guidance will be useful to the public, whilst it will also teach himself,—which was the original proposition of the late Lieutenant Governor. This last is the plan which to the present Lieutenant Governor also seems advisable.

12. It appears on the whole, from the reports of the Judges, that the system of civil procedure does not provide for such a plan. In the Lieutenant Governor's opinion it would be an improvement if it did; and he can see no reason why it should not be so adjusted as to do so. In the English Equity Courts there is a Master, who is exactly in the position required for this plan. There must be work in the Mofussil courts, especially in cases upon what is called the miscellaneous file, which are not in the nature of appeals, but of original suits, and are very numerous, which would afford the means of training young men for the office of Judge, without wasting their own time or that of their chief's.

13. But this requires, it would seem, some change of procedure.

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*From* H. B. LAWFORD, Esq., *Officiating Register of the Sudder Dewanny Adawlut to the Officiating Secretary to the Government of Bengal, —No.* 1401, *dated 8th November* 1859.

I am directed to acknowledge the receipt of your letter, No. 3216, of the 19th May last, and to forward, for the information of His Honor the Lieutenant Governor of Bengal, abstracts of replies received from some of the Zillah Judges who were consulted on the subject, as also copies of minutes recorded by the Judges of this Court, relative to the judicial training of junior Civil Servants.

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*Abstract of replies from some of the Zillah Judges concerning the judicial training of junior Civil Servants.*

JESSORE.—*Mr. W. S. Seton-Karr, Judge.*—Mr. Seton-Karr, after premising that the subject had been brought by him before the late

Lieutenant Governor when on a visit to Jessore in January 1858, proceeds to deprecate the policy of transferring Civilians from the revenue to the judicial branch, for an Assistant employed in deciding summary suits is really being fitted for the bench. Mr. Currie's new Bill will afford junior Civilians greater facilities for improvement in questions relating to land; but, to bring other points within their cognizance, a few judiciously selected Moonsiff's appeals—say two a month, and in which the pleadings have been completed—should be laid before them for consideration of the issues and adjudication, the Judge himself seeing whether the issues are correctly fixed, the decision so given being appealable to him. To effect this, no change in the law need be made, if only the executive Government vest these officers with Moonsff's powers. A little care on the part of the Judge would prevent any encroachment on the time of his subordinates when most engaged in the discharge of their immediate functions. Mr. Seton-Karr goes on to say, with reference to the appointment of Assistant Judges as Assessors, that the trial of cases by Assessors is not popular in Jessore; that he could not fix upon a sufficient number of sufficiently good Assessors; that he prefers employing junior Civilians on such a scheme as above given by him; and finally concludes by pledging himself to carry it out at once, with every prospect of success, with the materials at present at his command.

EAST BURDWAN.—*Mr. H. M. Reid, Officiating Judge.*—Assistants to Magistrates and Collectors might be appointed Assistant Judges with Moonsiff's powers, under the supervision of the Judge, who should choose, from Moonsiff's files, originally, bond and other easy cases, and ultimately, cases of greater difficulty, for their decision. Miscellaneous cases also might be so included. Thinks that to admit of their sitting as Assessors, it would be necessary to amend Regulation VI. of 1832, which contemplates the employment of Natives alone as such.

WEST BURDWAN.—*Mr. P. Taylor, Judge.*—Thinks that, under the existing laws, Assistants to Judges could only be employed in the translation of pleadings and other papers; in reporting upon petitions for review, upon cases instituted by paupers and those of resistance to processes; in testing the correctness of arbitrators' awards and maps drawn by Ameens; in doing the work of Ameens in the Mofussil; and with miscellaneous office duties. In the Sessions Court they might with advantage sit as Assessors.

TIPPERAH.—*Mr. H. C. Metcalfe, Judge.*—Assistants to Judges should, in the first instance, be trained by watching the trial by the Judge of civil suits selected especially for their improvement; but, in time, they might be called upon to furnish their own opinion upon the points at issue. In the event of Small Cause Courts being established, the Assistant might be appointed junior Judge, and decide cases, at first up to fifty Rupees value, appeal lying to the senior Judge. His powers might, however, eventually be commensurate with those of the Sudder Moonsiff. In the criminal court, the Assistant might conduct in person all cases committed to the Sessions, and appeals in which Government is in any way interested, but he should first be required to pass the second grade examination.

SARUN.—*Mr. H. Atherton, Judge.*—Thinks that junior Civil Servants, when declared qualified for service, should be appointed Assistants to the Judge only, under whom they might be employed as translators, by which arrangement they would acquire a knowledge of official language and of the business of the country. But the object in view would be best attained by a recurrence to the old system of re-establishing the office of Register, the abolition of which was, in the opinion of Mr. C. F. Smith, formerly Judge of the Sudder, "the most fatal blow ever struck at the efficiency of the Civil Service."

PATNA.—*Mr. R. Scott, Judge.*—Mr. Scott thinks the custom that obtains in Magistrates' courts of making over investigations to Assistants, of no utility, and is, therefore, opposed to a similar system in the Judge's office, where the Assistant would be of use simply in matters of mere routine. In lieu, then, of the course recommended, it is proposed, shortly, that junior Civilians be examined in the law of evidence, that those who pass be *proformâ* Assistants to, and attendants on, the courts of Judges, their presence being optional, and that the Judge should not employ them on office work, but, to prevent the possibility of a young man coming to court as a mere *lounge*, he should have the power to dispense with their attendance.

BACKERGUNGE.—*Mr. F. B. Kemp, Judge.*—When a Civilian has acquired a colloquial knowledge of the vernacular, he should attend, say two days in the week, at the Judges' courts, where, by hearing and making abstracts of the pleadings, by fixing the issues, by giving his opinions on points of law, and observing the course of procedure, he would obtain an insight into the work of a Judge, and might ultimately be permitted to decide small cases, and act as juryman in the Sessions Court. The Judge might report quarterly on his Assistant's progress.

MOORSHEDABAD.—*Mr. A. Pigou, Officiating Judge.*—To enable an Assistant to decide any civil case, a change in the laws in force must be made; but he would derive great benefit by sitting with the Judge when disposing of suits, civil and criminal, and by reporting on petty appeals and miscellaneous orders.

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*Minutes by the Judges of the Sudder Dewanny Adawlut on the judicial training of junior Civil Servants.*

*Mr. H. T. Raikes.*—The Judges whose opinions have been asked on this subject seem to me to look to greater results than the Lieutenant Governor's minute contemplates.

The majority of them propose to entrust the junior Assistants with judicial powers to decide suits of small amount. This, I think, is neither necessary nor intended to carry out the Lieutenant Governor's scheme.

The proposal is to make some of the junior Civilians Assistants to the Zillah Judges, both as a means of training them for judicial employment, and at the same time assisting the Zillah Judge in the performance of his own duties. These two objects will not be attained by giving the Assistants petty civil cases to decide, as such cases are never on the Judge's files.

But I think all practical purposes will be attained satisfactorily, if an Assistant, who has passed his first examination, be appointed Assistant to the Zillah Judge, and be required to *prepare* suits for hearing at their different stages under the new Procedure Act.

The Judge is not likely to have upon his own files so large a number of original suits that the attention of the Assistant cannot be given to each of them in their order. Under the new Act now in operation, each stage of a case has to be regulated by the order of the presiding Judge, and if this duty is entrusted to an Assistant, in consultation with the Judge, the Assistant, while practically learning all the steps of procedure required to be taken in the progress of a suit, would soon by his own suggestions and experience be able to give material assistance to the Judge in expediting cases to a hearing. He should also be required to sit with the Judge when the parties first appear, and hear the oral pleadings and the settlement of the issues by the court. He might then be told how to regulate the further progress of the suit, to watch for the receipt of the necessary returns, &c., and ultimately attend the final hearing when judgment is passed.

In the same way, the Assistant might superintend the progress of all miscellaneous proceedings in execution of decrees and in disputed claims to property at that stage of a case.

I would not require an Assistant, while employed in the above duties, to try and decide cases of any description, but would confine his services exclusively to the preparation of cases for the Judge and attendance on the bench when cases are heard, witnesses examined, &c.

The Assistant should be encouraged by the Judge to consult him on all points which present themselves in the cases pending, whether of procedure, practice, or law: and the Judge should report half-yearly upon his qualifications, especially whether he displays any marked aptitude for the judicial line of the service, or the reverse.

I think also that eventually a judicial court should be established to be presided over by an officer of this grade; the duties to be similar to those of a Register in former days; and while I feel confident that the training proposed would enable the junior Civilians to qualify themselves to preside over such courts, whenever appointed to them, the opportunity would thus be afforded of testing their assumed qualifications for judicial employment without thrusting them at once into the high position of a Zillah Judge, which is now almost the only experiment the Government can make of an officer's judicial abilities.

But even if no such opportunity offered of employing these Assistants intermediately in an appointment exclusively judicial, the preparatory training in the Judge's office will have given them the opportunity of observing the practical working of many laws and of gaining an acquaintance with some leading legal principles which the experience of the Judge will have enabled him to impart—acquirements which will not fail to be advantageous to a junior officer in whatever branch of the public service he may happen eventually to be employed.

(Signed) H. T. RAIKES,
*Judge.*

*The 3rd August* 1859.

*Mr. J. H. Patton.*—I would not at first employ Assistants in the discharge of judicial functions, but train them by making them prepare suits for hearing by the Judge under the new Procedure Act at their several stages. This would be an assistance to the Judge and help to make the Assistant familiar with the routine of judicial business. I would also require the Assistant to sit on the bench with the Judge at the hearing of the cause, which would give him an aquaintance with the mode of dealing with issues and a readiness in apprehending the salient points of the controversy at issue, and give him, moreover, familiarity with the practical working of laws, and a knowledge of leading legal principles. The Judge should advise and counsel the Assistant and impart to him all possible information on every occasion that presents itself; and he should make regular periodical reports in respect to the Assistant's progress in this species of training, noting especially his fitness for the judicial bench, and the probable chances of his continual success in that line.

(Signed) J. H. PATTON,

*The 4th August* 1859. *Judge.*

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*Mr. C. B. Trevor.*—The Court has been requested to report what, in its opinion, would be the best means of carrying into effect the measures proposed by the late Lieutenant Governor in regard to the judicial training of junior Civil Servants.

As a general rule, a person appointed to the bench should have a theoretical and practical acquaintance with the work which he will have to perform. Acting with a view to this rule, the offices of Moonsiff and Sudder Ameen should be filled by those who have not only passed the examination, but, for a certain time, have practised in the civil courts. Such, however, is rarely the case, and Moonsiffs generally have to acquire the practical knowledge of their civil duties when on the bench.

In the case of young Civil Servants the problem seems to be, by what means can the necessary theoretical and practical knowledge be acquired by them before taking their seat on the bench under the present system of the service.

As by that system all officers have a claim to become Civil and Sessions Judge, unless it be in cases of clear incapacity, the question concerns every Assistant.

By the new Code of Procedure, the court has to do everything itself in the presence of the parties. It therefore appears to me quite out of the question to employ Assistants in doing that which, by law, must be done by the presiding Judge himself.

It appears to me that a portion of the theoretical knowledge necessary for officers about to fill civil judicial offices might be acquired in College. The Assistants might be required to attend the lectures of the Law Professors of the College on the system of law current in the Mofussil, and the acquirement of a certificate of proficiency might be made a *sine qua non* to passing out of College. No doubt the know-

ledge thus acquired would be partial and superficial, but in the absence of any special training for this country in England, that knowledge would be of some advantage to a young man, and would enable him thus early to compare the particular system of law which he will hereafter have to administer with that of which, perhaps, he may have learnt the rudiments when in England.

Supposing, then, that this degree of knowledge of civil law were acquired, it would be impossible that a young Assistant could prosecute it for the next two or three years. His duties as Assistant to the Collector and Magistrate, and the examinations which he has to undergo in those departments of the service, would require his undivided attention. After, however, he has passed his second examination, he might be required to attend twice or thrice a week in the Judge's or the Principal Sudder Ameen's court, and report the cases that he hears there in his own language. It should be an instruction to the Judge to peruse these reports for the purpose of ascertaining whether the reports show that the reporter has understood the nature of the case, and if he has not, to point out his errors. By attending regularly for six months in a civil court and thus reporting the appeals and original cases there heard from beginning to end, giving an abstract of the pleadings, the evidence, the arguments of the Pleaders, and the decision of the court, a young man of ordinary intelligence will have become to a certain degree acquainted with the practical working of the civil courts; and joining the theoretic knowledge which he has previously acquired to the practical insight into the working of the courts thus gained, he would eventually, when raised to the bench, find himself not an entire stranger to the business of the court over which he presides.

The Judge should, at the end of six months, be required to report on Assistants thus employed, and it would remain for the local Government to take notice of any especial aptitude for judicial duties that may thus be brought to its notice.

It seems to me that some plan of this nature is preferable to that of allowing Assistants to decide cases even of small amount themselves; and as to the proposition that Joint Magistrates and Deputy Collectors should decide them, they have such onerous duties in their own departments that their attention should not be distracted from them.

The foregoing remarks are made with reference to the present system of the service. It has frequently been suggested that it would be well to revert to the old plan of allowing a young man to select his own department and of retaining him in that from the commencement to the end of his services. Looking to the revenue and judicial branches, I do not think that it is at all expedient that they should be kept distinct. The one is so intimately connected with the other that the knowledge of the former branch is absolutely necessary to enable a Judicial Officer fully to understand more than one-half of the civil business coming before him. Moreover, although a knowledge of law is very necessary, it is not to be compared to the necessity which exists that every officer should become thoroughly acquainted with the parti-

cular character of the people to whom he has to administer justice,—a knowledge which, to become intimate and deep, can only be acquired by a practical acquaintance with the criminal and revenue branches of the service.

(Signed) C. B. TREVOR,

*The 27th October* 1859. *Judge.*

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*Mr. G. Loch.*—I look upon the scheme proposed by the late Lieutenant Governor in his minute of 24th March 1859, as not likely to be attended with any good results. While perfectly alive to the absurdity of our present system, which puts a Judge on the bench without any, it may be called, judicial training, and requires him to decide appeals from and exercise control over subordinate officers who have passed their lives, it may be, in deciding suits, I do not think the attendance of Assistants at the Judges' courts during the first year of their public career will give them that permanent instruction which may be useful to them hereafter, and enable them, when appointed to the bench, to carry on their duties with that familiarity which is so necessary both for the expedition of business and the comfort of the suitors.

Our present system of promotion to the bench is very unsatisfactory, and I regret much that some system is not introduced by which junior officers at an early period of their careers might be trained especially for the bench. Under our present system, however, I think a young man's time for the first three or four years of his career is sufficiently employed in learning his duties as Magistrate and Collector,—duties indispensable to be learnt—and if he be required, in addition, to acquire a knowledge of the duties of a Judge, it will at best be but a smattering and very probably learnt only to be forgotten, for, when once vested with full powers of a Joint Magistrate and Deputy Collector, or when sent to take charge of a Sub-Division, he will not have time nor opportunity to exercise this knowledge. An Assistant now remains at the Sudder station of a district for a very short period. In the course of a year from his joining it, he is expected to pass his first examination, and having done that, he is liable to be sent to take charge of a Sub-Division. For the next fifteen years of his career, he is employed in the duties of Magistrate and Collector, and he has no time to turn his attention to judicial duties other than those which come before him in his capacity of Magistrate and Collector. Suppose him promoted to the bench after these fifteen years' service, it could not be said that the little instruction he might have picked up in the first years of his career, when he was learning the mere alphabet of his duty, would avail him anything or fit him for the new duties to which he is called, the law, perhaps, having also in the mean time been altered.

I think a practical knowledge of the duties of Magistrate and Collector indispensable for the right performance of the duties of a Judge. I think, also, that a man should not be promoted to the bench without long previous training in a subordinate judicial capacity. At present,

we find that an Assistant is thought incapable of carrying on the duties of a Magistrate or of a Collector without previous training, and rightly so, and no one would think of appointing him to take charge of a district or a treasury. But without any training in the particular duties of a civil Judge, or any knowledge of the law by which his proceedings are to be guided, a man after fifteen or more years' service as Magistrate or Collector or both, is transferred to the bench and expected to control a number of subordinate courts, the Judges of which may have commenced and continued their judicial career before he entered the service. It has been remarked that the decisions of the Sudder Court show that the judgments of the Uncovenanted Judges are superior to those of the Covenanted. One reason for this, admitting it for argument's sake to be the case, may be found in the inexperience of the Covenanted Judges when they are appointed to the bench. A conscientious man drawing a large salary from Government and with files of appeals and other suits calling for decision, cannot remain quiet till he has studied the civil laws. He must do something, though in some instances it would be better for the parties had he abstained from using his "'prentice hand" in their cases till he knew what he was about. He bungles on, practice makes perfect. A knowledge of the course of procedure is soon acquired, and he gives up his spare time to study the law, and, after a year or two's continual labor, acquires a knowledge, imperfect however, of the duties of his office.

And what is the remedy for this state of things? The only course I can see, constituted as the Civil Service is at present, is for the Government to select from the Assistants who have passed their examinations and have acquired a practical knowledge of their duties as Magistrates and Collectors, such men as may seem fit, and appoint them as Assistant Judges. I would leave the Government to make the selection, for it is unlikely that men would willingly leave that career of the duties of which they have acquired a knowledge, and in which they have been looking forward for distinction and promotion, to take up a new and laborious course of study in a career in which they may long hold a subordinate position, and to which they may take a distaste, unless some inducement, such as a somewhat higher salary at first starting and the prospect of promotion *pari passu* with their cotemporaries, is held out to them. When once an officer is appointed as Assistant Judge, he should first learn the details of a Judge's office. He should be required to prepare the record for the Judge, to superintend the ministerial officers, and to see that the pleadings are properly filed and the processes duly issued and returned, and should perform the ordinary duties of a Register. After acquiring a knowledge of these duties, he might have suits ordinarily disposed of by Moonsiffs made over to him, appealable to the Judge, or the examining of accounts or taking evidence for the Judge in applications for certificates under Act XX of 1841, and in other miscellaneous proceedings. As he gains experience he could be employed as an Assessor with the Judge in hearing regular suits and appeals, and suits of a greater value might be entrusted to his decision, till, as Register of the court or Additional Judge of the district, he would have the power to try suits dis-

posed of by the Principal Sudder Ameens; and appeals from his decisions would lie, as in the case of those officers, according to their value, either to the Judge or the Sudder Court.

The suggestions I have offered are not new. Experience has, however, shown me the necessity of some such course of training as has been proposed above. When once commenced, the training should be continuous, and the Assistant should look forward for advancement in the judicial branch of the Service only. A mere smattering of learning in the commencement of an Assistant's career, extending, perhaps, to an acquaintance with some of the rules of procedure, would do little good to the learner and would scarcely help him to adorn the bench.

(Signed) G. Loch,

*The 31st October* 1859. *Officiating Judge.*

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*Mr. E. A. Samuells.*—I agree with Mr. Trevor and Mr. Loch, that Assistants cannot be employed in the preparation of cases under the new Code of Procedure, and that they would derive little or no benefit from an attendance at the Judge's court during the first year or two of their official career.

The entire separation of the judicial from the revenue branch of the Service is, under the present constitution of the Service, impossible, and I doubt if it be desirable.

It is an entire mistake to suppose that Judges in this country take their seats on the bench without any judicial training. It is true that the training they receive is totally different from that of the Judges who preside in courts where the English law prevails, but if a good foundation were laid, and the stimulus to exertion which is now in a great measure wanting were supplied, I see no reason why it should not produce equally good results. If, on the one hand, the English Judge has been compelled in his practice at the bar to acquire a thorough knowledge both of the principles and the practice of the law, and a habit of expressing himself logically and readily upon all questions submitted to him; on the other hand the Indian Judge has had his judicial faculties exercised constantly for some fifteen or sixteen years before he attains the dignity of a Judge in determining the guilt or innocence of the accused in criminal cases and deciding disputes between parties on questions of rent, replevin, partition, and registry of property, &c., in what we call "revenue," but what in other countries would be termed "civil suits." The criminal law which he administers as Magistrate is the same which he administers as Sessions Judge. The law of procedure in revenue and civil suits is now identical, or nearly so; and the only portion of the civil law with which a Judge may be to some extent unacquainted when he takes his seat on the bench is the substantive civil law in cases of inheritance, marriage, contracts, &c., but questions connected with these laws so frequently come incidentally under the notice of Collectors in the discharge of their ordinary duty, that it is impossible they can be entirely ignorant of them. Nor, if well grounded

in the general principles of the civil law, can the acquisition of the substantive law of this country be a matter of any difficulty to them.

Theoretically, the training of the Indian Judge is better adapted to the end in view than that of the English Judge, who steps at once from the bar to the bench ; for the latter has been schooled in habits of controversy, and has thence acquired, it may be presumed, a tendency to exercise his ingenuity in defending one side of a question, without much regard to its justice, while the former, having, from the outset of his career, held the position of arbitrator between contending parties, has been accustomed to weigh the evidence on both sides impartially before forming his judgment, and has never had occasion to consider a case with any other motive than that of doing strict justice between man and man.

What, then, is the reason that the training of the Civilian has in practice proved so defective as I am afraid it must be admitted to have been? The causes of failure appear to me to be these:—*first*, the Civilian is not grounded in the principles of law before he commences his career, and has little leisure, frequently, I fear it must be confessed, little inclination to study them afterwards ; *secondly*, he is not compelled, either by publicity or by the presence of an intelligent bar, to qualify himself for the judicial duties of the appointments he fills ; and *thirdly*, he has no sufficient stimulus to exertion, for he knows that within certain limits his ignorance will be no bar to his promotion.

To place the judicial Service in this country on a sound basis, we must, in my opinion, insist on a thorough judicial training from the beginning. There are now very few appointments in the Civil Service which do not require the exercise of judicial faculties. The duties of Collectors are chiefly judicial, of Judges and Magistrates wholly so; and of these officers and their subordinates the bulk of the Service is composed, while Secretaries, Officers of Account, and Political Agents have frequently legal questions of considerable difficulty to deal with. I am strongly of opinion, therefore, that those branches of knowledge which are of most importance on the bench should occupy a much more prominent place than they do in the competitive examination which candidates for the Civil Service are now required to pass. It may be necessary that the candidate should possess a fair knowledge of Latin, Greek, and Mathematics. Acquaintance with these languages proves that he has had a liberal education, but it is infinitely more necessary, with reference to the duties on which he is to be employed in this country, that he should be well versed in the art of English composition and in jurisprudence, and its sister science, logic. The highest marks should, I think, be awarded to these subjects.

In this country, the study of law has hitherto been entirely neglected. The students' time in College is wholly devoted to the acquirement of the Native languages ; and the examinations in substantive law, and the law of procedure, which Assistants are afterwards required to pass, are of very little utility. It is not substantive law or the law of procedure of which our Magistrates, Collectors, and Judges so often betray their ignorance. A knowledge of these they are obliged

to acquire in the course of their practice. It is in the law of evidence, in the general principles of law, and the application of those principles to facts, that they show the insufficiency of their legal education. It is to these points, therefore, that attention should be chiefly directed, and I would propose that very material alterations should be made in the system of instruction now pursued in the College of Fort William. The importance of acquiring a thorough knowledge of the Native languages cannot be exaggerated, and, therefore, the time of the students should continue to be chiefly devoted to this subject, but instead of putting story-books into the hands of the students in a character and style which will be of little immediate use to them, they should have books, I conceive, which would familiarize them with the language of the courts in which they are to preside, printed in characters resembling those which it is important they should, on their entrance on official life, be able to read without assistance. A portion of their time should, on the other hand, be devoted to legal studies, and they should not be passed into the Service until, in addition to the knowledge now required from Assistants of the criminal and revenue laws of the country, they had evinced a thorough acquaintance with general principles of law and evidence. The Assistants' examination would then be unnecessary, but might be re-placed by an examination at the end of the tenth or twelfth year in the different branches of the civil law. If these examinations were conducted with impartiality, and it was made a rule that no one who could not obtain a certificate from a competent Board of Examiners should take his seat on the bench, the present reproach of our Service would be removed. No one who was not well qualified both by judicial habits and judicial knowledge could possibly obtain a seat upon the bench.

A well educated bar and an intelligent public must be a work of time, and, I fear, will be long wanting in the Mofussil.

The stimulus which arises from the knowledge that promotion will depend upon merit, and not upon seniority, the Government have it in their power to supply.

In advocating an examination in English composition as affording one of the best tests of the candidate's fitness for the duties of the Civil Service, it must not be supposed that I mean merely what may be termed the mechanical art of composition, a correct knowledge of the rules of grammar, and a facility in forming smooth and well rounded periods. My idea is that the administrative and judicial faculties of a candidate may be better gauged by his English writings than by his faculty of parsing a certain number of pages of Latin or Greek. A narrative, for instance, of any important event in history; a leader on any of the political occurrences of the day; a summary of official correspondence; an argument on some disputed point, and a speech on some subject affording scope for a display of the speaker's ability to state facts clearly and concisely, and to draw just conclusions from them, would furnish much the same test for judging of a candidate's qualifications as that which we employ in forming an opinion of our Statesmen and Judges. There could be no cramming for an examination of this kind, and we should get the sort of men we want, not mere

book-worms with good memories and unlimited powers of loading them, but men of good, general knowledge and ability, quick, clear-headed, endowed with the faculty of communicating their knowledge readily and lucidly, and applying it judiciously to the various subjects with which they may be required to deal. The present candidates for the Civil Service are not boys, but men of one or two and twenty, and it cannot be said, therefore, that an examination of the kind I propose demands higher powers than we could expect at theirs. If candidates cannot show at twenty-two that they possess the qualities most essential in Judges and Administrators, it may safely be concluded that they do not possess them.

(Signed) E. A. SAMUELLS,

*The 17th November* 1859. *Judge.*

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*From* H. B. LAWFORD, Esq., *Register of the Sudder Dewanny Adawlut, to the Secretary to the Government of Bengal,—No.* 820, *dated 1st June* 1860.

I am directed to acknowledge the receipt of Under-Secretary Lord H. U. Browne's letter, No. 7017, dated the 8th December 1859, in which the Court are requested to state what practical course of immediate action they, as a body, would recommend with regard to the judicial training of junior Civil Servants.

2. In reply, I am directed to state that, with advertence to the present state of things, the Court are of opinion that such of these officers as are now arriving in the country should be well grounded in the general principles of law while they are studying the Native languages in the College at Fort William; and for this purpose they should be required to attend law lectures, to be delivered by well qualified law Professors selected by Government, on the written law of the country as gathered from the regulations and Hindoo and Mahomedan authorities. They should also attend the higher courts at the Presidency while in College. Such attendance is customary with law students in Europe.

3. Examinations in the subjects thus studied should be held from time to time, and no Civil Servant should be allowed to leave the College until he had passed one or more of these examinations.

4. On passing out of College, the Civil Servant should be sent into the Mofussil, as at present, as Assistant to the Magistrate and Collector. He would there learn the important duties of those officers, acquire the vernacular languages more perfectly, and become acquainted with the character and customs of the Natives.

5. His knowledge in these particulars would be tested at the half-yearly examination of Assistants; and, to preclude the possibility of his losing any of the legal knowledge he had acquired while in College, questions in the subjects he had been previously examined in should be introduced into these examinations.

6. After passing according to the second standard, he should attend the Judge's court at least twice a week, and report to the Judge on the

cases he hears there. The Judge should also give him, once a fortnight, a civil suit that had been decided, to write a judgment on, and submit to him for his perusal. The Judge should go carefully over this with him, and point out any errors into which he had fallen; and he would in this way become tolerably well acquainted with the practical working of the civil court.

7. At the end of every six months the Judge should report on the qualifications and abilities and progress of the Civil Servant; and the Government might with advantage hold out encouragement to all who should exhibit zeal and industry in endeavouring to make themselves thoroughly conversant with the civil law and procedure.

8. For the junior Civilians who are now in College, or who have already commenced their career in the Mofussil as Assistants, the scheme laid down in paragraphs 2, 3, 4, 5, and 6 of this letter is of course impracticable. The Court would, therefore, recommend that only such portion of the system of training as is proposed in the 6th and 7th paragraphs be adopted with regard to these officers.

9. This training should continue until the Civilian's appointment to the Joint Magistracy of a Sudder station. It would therefore go on probably for four or five years, and during that time he might become so conversant with the law and working of the civil courts, that he would not be likely to forget either between this period and his own elevation to the bench.

10. On the contrary, as Collector, he would continually have to apply practically what he had been hitherto learning theoretically; and he would be, therefore, continuing the work of fitting himself to hold the appointment of a civil Judge.

11. To carry out these ideas, some alterations in the present system would have to be made.

12. The Civilian would have to stop very much longer in College than he does now, probably eighteen months or two years, and he would have to be kept at the Sudder station of his district, instead of being sent into the interior to take charge of a Sub-Division; but the Court consider that, if any disadvantage is likely to arise from this, it will be more than counterbalanced by the improvement that will take place in the qualification of public officers.

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*From* R. VERS THOMPSON, Esq., *Junior Secretary to the Government of Bengal, Education Department, to the Secretary to the Government of India, Home Department,—No.* 448, *dated* 17*th August* 1860.

I am directed to acknowledge the receipt of Mr. Under Secretary Chapman's letter, No. 427, dated the 25th February last, with enclosures, requesting the opinion of the Lieutenant Governor on the subject of a proposal by the Government of Bombay to provide a course of legal study for young Civilians destined for the judicial branch of the Service.

2. In reply, I am desired to say that it appears from the report of the Civil Service Commissioners, transmitted with your office letter No. 1254, dated the 7th ultimo, that that portion of Mr. Howard's plan which refers to the examination of candidates *at home* has been partly anticipated, and that it seems to have been determined by the authorities in England that the next examination should include the general principles of jurisprudence, together with the elements of Hindoo and Mahomedan law. With the view of carrying out this object, the study of law has been made obligatory. Law books have been recommended for study, provision has been made for the expenses of the students, and a test examination is to take place a year after that by which the candidates were originally selected. It appears, therefore, to the Lieutenant Governor unnecessary to discuss further the question of the *home training* in legal studies of those who are candidates for admission to the Service.

3. As regards that portion of the plan which relates to the course of study to be pursued in this country, I am directed to state that the Lieutenant Governor has already expressed his opinion upon the subject in Mr. Secretary Young's letter, No. 3439, dated the 28th June last. In this it was proposed that legal instruction should be given to the junior Civil Servants whilst studying the Native languages in College, and that the Professor and Assistant Professor of law, with some increase to their emoluments, should be the persons to whom should be delegated the duties of imparting such instruction.

4. It was, at the same time, suggested that the system of civil procedure should be so adjusted as to admit of the employment of an Assistant, on his first joining a station, under the Judge of the District, to help him in such duties as might be entrusted to him. The above appeared to the Lieutenant Governor the most practical course of action to be adopted for the purpose in view, and he desires me to say that he still adheres to that opinion.

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*From* RIVERS THOMPSON, Esq., *Junior Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department,—No.* 664, *dated* 13*th November* 1860.

In continuation of my letter, No. 448, dated the 17th August last, I am directed by the Lieutenant Governor to forward herewith a copy of a communication,* which has since been received from the Sudder Court, containing the opinions recorded by the Judges, on the proposal of the Director of Public Instruction at Bombay, for providing a course of legal study for Civilians designed for the judicial branch of the Service.

* No. 1346, dated 13th September 1860, with enclosure.

*From* H. B. LAWFORD. Esq., *Register of the Sudder Dewanny Adawlut, to the Officiating Secretary to the Government of Bengal,—No.* 1346, *dated* 13*th September* 1860.

I am directed by the Court to acknowledge the receipt of Mr. Junior Secretary R. Thompson's letter, No. 92 of the 26th March last, and to submit, for the information of the Lieutenant Governor, the accompanying copies of minutes recorded by the Judges, on the proposal of the Director of Public Instruction at Bombay, for providing a course of legal study for Civilians designed for the judicial branch of the Service.

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*Minutes recorded by the Judges.*

*Mr. H. T. Raikes.*—Mr. Howard points out to the Bombay Government, that a system of legal instruction has been introduced there, which will supply that legal training hitherto wanting to qualify Natives of this country for the judicial bench, and must eventually render it difficult for the Government to exclude them from the highest judicial offices, and sooner or later will give them a monopoly of those judicial appointments which are now exclusively held by the Covenanted European officers of Government.

To meet this emergency, Mr. Howard proposes that all those young men, who are designed to enter the judicial line of the Service, shall be required in future to devote one year in England to a course of legal instruction after passing the competition examination, and shall not be allowed to proceed to India until they have passed an examination in law.

Mr. Howard, moreover, proposes that when the young men arrive in this country, they shall pursue a course of legal study simultaneously with their study of the vernacular languages, and, when qualified, shall be appointed Assistant Judges in the Mofussil.

I concur entirely in all Mr. Howard has proposed on this subject, with the addition that the course of legal study in England, whatever it may be, shall be compulsory upon all the young men who pass for the Civil Service. It will be almost impossible to make any selection at that time for the judicial branch of the Service, and if it be left to the option of the young men themselves, few, if any, will care to defer their departure for India for another year's study followed by another examination in England.

I do not feel myself competent to say what should be the course of instruction followed in England, and doubtless this part of the scheme, if adopted, will be entrusted to those who are fully qualified to decide for the best. But in this country, the law of property here, and the law of contract and of evidence, will afford the most practical knowledge of law after the student reaches it, and the Calcutta University may be made the means of imparting the necessary instructions.

In a few years, if the suggestions and recommendations of the Committee lately appointed to revise the system of Pleaders' examina-

tions be adopted by the Government, the same necessity for raising the qualifications of the European Judge, adverted to by Mr. Howard in his first address to the Bombay Government, will also exist on the side of India, and it behoves the Government to be prepared for it.

With such a prospect before us, it is only fair to the European officers of Government to give *them* the means of qualifying themselves, in order that they may fairly maintain the positions they now occupy under the rules of the Service. I doubt if a better scheme than the one recommended by Mr. Howard, can be selected for the purpose.

(Signed) H. T. RAIKES,
*Judge.*

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*Mr. G. Loch.*—The importance of the suggestions contained in Mr. Howard's letters to the Government of Bombay cannot be questioned. The want of the knowledge of the principles of jurisprudence is, I think, felt and acknowledged by every member of the Civil Service when appointed to the bench. The experience attained during the course of his service in sifting and weighing evidence is of incalculable advantage, and fits him in many respects for the office of Judge, but the substratum is, in general, wanting. He has no general principles of law to guide him. His legal education at Haileybury is next to nothing, and very often forgotten; and, during the course of a toilsome life in this country, he has little leisure, even if he had the inclination and means, to prepare himself by study for the duties of the bench. He cannot give the reason why this should be done or left undone,—this evidence should be accepted and that rejected. He acts in good faith and by his own common sense, but not by legal knowledge, and very frequently in opposition to all legal principles.

I have always thought it objectionable that young men were sent out to this country with such very imperfect knowledge of the principles of law, and that, when they arrived in this country, their whole attention was turned to the Oriental languages, and they were permitted to enter upon the duties of their office, entirely ignorant of the law they had to administer, and without any principles to guide them, but a hearty desire to do justice between man and man.

The following text books appear to afford a suitable course of study:—The Institutes; Bowyer's Modern Civil Law; Blackstone; Taylor and Best on Evidence, to which may be added Mr. Norton's book as specially applicable to cases in this country; Story, Addison, or Chitty on Contracts; Sedgwick on Loots and Damages. And to these must be added a knowledge of the regulation law in force, and of the principles of Hindoo and Mahomedan laws which may be gathered from Macnaughten or Elberling.

The next point to be thought of is, when and where is this course of study to be gone through. Had Mr. Macaulay's plan been thoroughly carried out, the young Civilian would have had ample time during the two years he remained at home, after his first examination, to have

acquired this knowledge under the best masters. Now he comes to this country as ignorant of law as were the young men educated at Haileybury; and advantage should be taken of the period he is obliged to remain in Calcutta to study the Oriental languages, to make him at the same time prosecute the study of the law. He should be required to attend the law lectures in the University of Calcutta, and should be subjected to periodical examinations; and, if the course of lectures were so prepared as to give him a thorough knowledge of general principles, he might, from them and the proper text books, attain, in the course of his fifteen months' residence in Calcutta, considerable knowledge of law, certainly sufficient to make him more useful than he is at present.

To make the judicial branch of the Service thoroughly efficient, men should be selected early in their course of service for the judicial line, and placed as Subordinate or Assistant Judges under the Zillah Judge, to whom all their decisions would be appealable. They would thus acquire a thorough knowledge of the working of the system of procedure, as well as keep in active exercise their legal knowledge. The first years of a young Civilian's life might be usefully spent, as now, as Assistant to the Magistrate and Collector, during which period he would acquire a knowledge of police and revenue duties, and at the same time gain judicial experience by trying cases brought before him in his capacity of Magistrate and Collector; but after a time he should be allowed to choose the judicial branch of the Service, and as an inducement to young men to enter it, increased emoluments might be held out to them. A Civilian would thus be prepared to take his seat upon the bench instead of being as now very much abroad.

(Signed) G. LOCH,
*Judge.*

*The 30th August* 1860.

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*Mr. H. V. Bayley.*—The Lieutenant Governor requests an opinion on the proposal of the Director of Public Instruction at Bombay, for providing a course of legal study for Civilians designed for the judicial branch of the Service.

2. The necessity for the proposal is stated to be that "as regards the new order of Covenanted Civilians, not one of them has ever had even the slightest instruction in law or jurisprudence" (paragraph 5), and that "the time is fast approaching when lawyers, trained in this country, will be procurable in such numbers, and possessed of such professional attainments, practice, and experience, as to constitute a formidable body of rivals to the untrained Judges of the Civil Service" (paragraph 11), and that "the result will be literally, sooner or later, to give Natives a monopoly of the judicial bench" (paragraph 16).

3. The proposal itself is to the effect that—

1.—One year should be spent in England, after appointment, in the study of general jurisprudence, by those whose first examination does not show them to have otherwise attained proficiency in law or jurisprudence.

II.—One year should be spent in India in the study of law.

III.—Examinations in England and India should test the proficiency attained, which should reach a certain standard.

IV.—There should be practical training in India, after such examinations, by attendance at the court of a Judge.

4. I quite concur in the necessity and expediency of these proposals.

5. *As to the year to be spent in England in the study of jurisprudence.*—The time of detention in England appears the only possible objection. But the detention from active service seems to me a much smaller evil than the want of due qualification for such service in the judicial line, which the absence of a course of study of jurisprudence in England entails; the more especially as the offices of Magistrate, Collector, Superintendent of Surveys, and their subordinate offices, and of Political Officers, are in this country judicial offices, however some of the term may appear to indicate that they are not so. The means in England both for acquiring a knowledge of jurisprudence, and for testing it by examination, are plentiful; and if the time be conceded, and the study made imperative by the Home Authorities, no more is wanted. Perhaps attendance at the courts of Westminster might be advantageously required of the students.

6. *As to the year to be spent in the study of law in India.*—The facilities afforded to the Natives are now equally available to young Civilians at each of the three Presidencies. The necessity of study at this period of entrance into the service is as acknowledged now as it was in Lord Wellesley's time, when law lectures existed and led to the preparation of a work of authority to this day, *viz.*, Mr. Harrington's "Analysis." The time could be obtained without interfering prejudicially as to the study of the vernaculars in the manner stated in the 63rd, 64th, 65th, and 78th paragraphs of Mr. Howard's minute, which I cite for readier reference.

"63. Two hours a day for a year would probably do more for a student than twice two hours a day for six months."

"64. And any young man who resolutely, from the day of his arrival, devoted not more than two or three hours a day to learning one of the vernacular dialects, would attain the appointed standard as quickly as it is now reached by the average of young Civil Servants."

"65. Junior Civil Servants might be fairly required to pursue legal and lingual studies *pari passu*."

"78. It remains to consider the case of young Civilians now in the country or presently to arrive. I believe that there are several young men who could be spared for a course of at least six months' legal study. I think in that time they might acquire such an insight into the leading principles of the law of contracts and evidence, as would enable them to pursue their studies unassisted."

This last measure is, I believe, adopted in regard to Staff Officers who require to pass for honors in the Native languages.

7. The course of study in India, which would be most useful in the civil side, would be such as refers to law of evidence and of contracts, and most of the course indicated in the preface of the 2nd edition of Norton's Law of Evidence. The original illustrations of the Indian Law Commission on the Penal Code, a view of the criminal codes of other countries, and the principles and precedents of criminal law as laid down in Alison,. Rennel, and in the American works of Bishop and Bennett and Heard, and (for current English decisions) in the Law Journal, would probably be useful subjects of lectures. At the Presidency, the students might be required to attend the high courts of appeal.

8. *As to the examinations in England and India.*—The means for these are, of course, just as available in England for jurisprudence as for classics or any other subject in which the young Civilian must pass there, and as much for law in India, by the Universities and even private teachers, as for languages in which the young Civilian must likewise pass. I would have penalties for delay or failure to pass, and money prizes and degrees of honor for high proficiency as is the case now with students in College in respect to the *lingual* examination.

9. *As to the attendance in Judge's courts, after passing the above examinations, and on going into the Mofussil.*—There are objections on this point, but nothing that appears insuperable, or of sufficient weight to prevent such attendance. The objections are these—

1*st.*—All the time of the Assistant to the Magistrate and Collector is said to be required by his superior officers; 2*nd*, there is no sufficient inducement to the Assistant to turn the proposed attendance at the Judge's court to account; 3*rd*, it materially rests with the individual Judge whether it may not be lost time to the Assistant; 4*th*, the Assistant would gain more practical judicial knowledge by acquiring familiarity with the natures and habits of the Natives in his daily ordinary practice in Cutcherry as an Assistant Magistrate or Collector, than by attending the Judge's court.

10. The first of these objections is of little weight, because the Assistant might well be relieved by a Native Deputy Collector and Native Deputy Magistrate of some of his present work,—for instance, by the former of the charge of stamps, mutation of names, and such like; by the latter of some of the petty assaults, cases of abusive language, or disputes as to nuisances, local boundary disputes, &c., which now are transferred to him. Say that the Assistant is relieved of these for two days, or even one day of the six. That one or two days spent in the Judge's court, where the Assistant might learn the procedure and see the application of the law of procedure, and acquire an insight into the application of legal principles to the facts of a case, would, in my opinion, be better spent than in an invaried daily repetition by an Assistant of the work to some extent mechanical, and certainly almost all of the same petty character which he has generally allotted to him by the Magistrate and Collector.

11. The second objection could easily be met by the Judge granting to the Assistant a certificate of his opinion of his diligence and proficiency during such attendance in his court, and that certificate should be considered by the Government as giving some claim to promotion or, if not to promotion, at least to choice of station, leave, and the like indulgences.

12. The third objection can be obviated by selecting the Judges who would conscientiously deem it a part of their duty to do their best to impart as much practical knowledge to the young Assistants as they could.

13. The last objection is probably answered by the first. Referring to paragraph 7 of Mr. Reeves' minute of the 4th November 1859, I do not see that four or five days in the Magistrate's and Collector's offices, and one or two in the court of the Judge, would impede the Assistant becoming "acquainted with the manners and customs of the people," or "the acquirement of that knowledge of the Native character and the institutions of the country, which is essential to the formation of a good Judge or a good Magistrate." A Judge's court, as far as my knowledge goes, generally shows a good deal of these, and that before an officer whose more mature experience can most fully illustrate and explain them.

14. Lastly, those officers who show, by these tests and the performance of their minor judicial duties, any peculiar fitness for the judicial line, might, as in Bombay or Madras, be Assistant or Subordinate Judges instead of Joint-Magistrates; and they should be required to adhere to that line. And this should be effected without injury to their pecuniary prospects; for instance, those who are so required to remain in the judicial line, but would under ordinary rules be eligible to higher paid offices than Judgeships, should have special allowances as compensation for the loss of promotion. In saying this, I am of course referring to the *status* of the Service as it now stands, and especially to the fact that the emoluments of a Revenue and Police Commissioner are by one-sixth more valuable than those of any Zillah Judgeship.

(Signed) H. V. BAYLEY,

*The 31st July* 1860. *Judge.*

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*Mr. C. Steer.*—In all that is said in these papers of the absolute necessity of providing a course of legal study for Civilians designed for the judicial branch of the Service, I fully concur; but the study should be completed in England.

When a Civilian comes out to this country, he should have nothing to do but to learn the language of the Province in which his future employment is to be cast. Having acquired a knowledge of such books as the Civilian is now examined in, while he is supposed to be in College, he should be sent into the Mofussil to the Head-Quarters of some Commissioner. There and then, his real education for the Service would commence. As Assistant Magistrate, Collector, and Judge, he

would be qualifying himself for the work of those departments. But the acquisition of the vernacular of the district should be his main business. Every other consideration should give place to this, the all-important one. Let the young Civilian acquire the vernacular, the "Chasa Bolee,"—and with the knowledge of the principles of law acquired by him in England, and the practical business of the courts acquired by him while he was studying the vernacular, you have a character fit for his profession.

With nothing less than such an intimate knowledge of the language as will enable the Civilian to hold free converse with the rustics of his district on any subject, can a man be said to be fit for his profession.

I know of very few men in our Service, and among the Europeans in the Uncovenanted Service the number is not large, who have this thorough colloquial knowledge of th evernacular. The few men who are thus qualified are men of first reputation with the Government, and the esteem in which they are held in their districts, is the best evidence of the importance the Native community attach to a complete knowledge of their language.

Indeed, no officer can do his duty properly so long as he knows no more of the language of the country than what four-fifths of the Civilians now do.

There is the greatest difference between the written Bengali and the spoken Bengali of the rural classes. There is a great difference between the language of the rustic and that of the townsman. Most Civilians, who pass the higher standard, can understand well enough what their Amlah say to them; and knowing what the subject is about, a great many can glean what a witness is saying before them; but many have not even this degree of ability; and they will probably go through their career with no greater power of conversing with the people without the aid of an interpreter, than they now possess.

This reliance upon the medium of another for explanation of what a rustic witness is relating, perpetuates the influence which the Amlah are supposed to have in our courts. Render the Civilian altogether independent of the Amlah, by giving him a thorough knowledge of the language spoken by the lowest orders in his district, and you remove at once the scandal which now attaches to our administration, *viz.*, the influence the Amlah are sopposed to have over the officers to whom they are subordinate.

What I would recommend therefore is this—

Give a Civilian a legal education in England.

Give him, as fast as you can, a knowledge of the written language in which he is destined to do business.

As soon as he is able to read and write, and in some measure to understand the books which are now the subject of study with Civilians in College, send the Civilian to the Mofussil.

When there, he should be under the eye of the Commissioner, and, therefore, at the same station.

He should be the Assistant in all departments. But the chief object, while an Assistant, being that he should acquire such a complete mastery of the language of the common people, as to be able to converse with them on any subject with fluency, he should be encouraged to acquire this qualification as soon as he can.

No Civilian should rise above the grade of an Assistant till the Commissioner applied for an examination for him, and a Committee had pronounced that he was able, with the utmost facility, to carry on a conversation with the most out-and-out clod-hopper of the district.

With this business done, you may safely launch the Civilian into independent office. Don't harass him after this with any more examinations in first and second standards, but rely upon the character and energy which has earned the man his profession, to fit him for the several grades of the Service, into which he will after some degree of probation pass.

(Signed) C. STEER,
*Officiating Judge.*

*The 4th August* 1860.

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*From* GEORGE COUPER, Esq., *Secretary to the Government of the North-Western Provinces, to the Secretary to the Government of India, Home Department,—No.* 899A, *dated, Nynee Tal, 8th August,* 1860.

I am directed to acknowledge the receipt of your letters, Nos. 404 and 1403, dated, respectively, the 25th February, and the 7th ultimo, and of their enclosures.

2. The first, I am to observe, calls for opinion of the Lieutenant Governor on certain proposals made by the Director of Public Instruction in Bombay, to ensure a suitable legal training for young civil officers; and the second gives an account of the course which is already pursued with that object by the Civil Service Commission.

3. Mr. Howard's proposals are three in number, and may be briefly stated as follows:—

I.—That Civilians, after passing the competitive examination, should pass a year in England in the study of the law, subject to an examination at its expiration;

II.—That after his arrival in Bombay, he should pass another year in legal studies; and,

III.—After having passed an examination at the end of that year, should be attached to the office of a Judge to learn the practical exercise of his profession.

4. From the report of the Civil Service Commission, it appears that Mr. Howard's first proposal has already been carried out; that at present, young men, after having passed the prescribed examination for admission, are expected to spend one year in England in the study of the law, and are subjected to a test examination at the end of it.

5. The Lieutenant Governor observes that the *curriculum* comprises the standard works on Hindoo and Mahomedan Law, and Blackstone's Commentaries, besides other standard works on legal matters.

6. His Honor has, therefore, no hesitation in expressing his belief that the legal qualifications, which are now required of a young man in England, are sufficient, and that there will be no occasion for the further year of study in this country, as recommended by Mr. Howard, to qualify him for the performance of his duties in these Provinces.

7. A young officer who has satisfactorily gone through the course of legal reading now laid down by the Civil Service Commission, will, in the practice of his every-day duties, acquire a practical knowledge of law, which will enable him to be at least a match in point of legal acumen with the Vakeels who will have to plead before him when he becomes a Judge.

8. For the above reasons, His Honor is of opinion that a year of additional study in this country would be simply a year lost, both to the Assistant himself and to the State, which could more profitably employ him in other matters, all of which in a greater or less degree would practically tend to advance his legal education; and the Lieutenant Governor would, therefore, deprecate any further steps being taken on Mr. Howard's proposals than those which have been already adopted by the Civil Service Commission.

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*From* R. H. DAVIES, Esq., *Secretary to the Government of the Punjab and its Dependencies, to the Secretary to the Government of India, Home Department,—No.* 2081, *dated, Lahore,* 13*th August,* 1860.

I am directed to express the opinion of the Hon'ble the Lieutenant Governor, as follows, on the questions mooted in your letters marginally noted, namely, how a course of legal study can best be provided for junior Civilians.

No. 26, dated 6th January 1860.
„ 405, „ 25th February „
„ 1404, „ 7th July „

2. His Honor observes, as is also remarked by the Civil Service Commissioners, that Mr. Howard's views have been to a great extent anticipated by the provision already made for the legal training of young Civilians in England. With regard to the books prescribed for study by the Commissioners, the Lieutenant-Governor will merely remark that he would prefer the attention of the students being given to the general science of jurisprudence, including the law of evidence, to the premature mastery of local and technical systems. His Honor entirely coincides with the Commissioners in thinking that a theoretical knowledge of the principles of law will be of comparatively little value, if not combined with a practical acquaintance with the conduct of civil and criminal suits, obtained by a regular attendance in courts of justice. The Lieutenant Governor gathers that a limited amount of attendance has been required. Without further details of the scheme it is vain to discuss it. But I am to state that His Honor lays great stress on the

*practical* training. It will probably give the study of the science a great interest in the eyes of the students; and it is the only effectual mode of initiating them into the practice of jurisprudence which they will have hereafter to carry on as an art and profession. In particular, the similarity in simplicity of procedure and subject-matter of the County Courts in England to the Indian District Courts would render them fit training schools for the young Civilians.

3. With regard to the study of Indian law after the Civilian has arrived in India, His Honor is averse to any plan which would increase the term of residence in the Presidency towns. The temptations to idleness are great, and the exposure to them should be made as brief as possible. The study of the Hindoo and Mahomedan law, as well as of the local law of civil procedure, is provided for in the scheme of the Commissioners. It may be a question if the year spent in England might not better be devoted to a more exclusive mastery of general principles and their practical application, and the study of the peculiar systems of India made to proceed *pari passu* with the acquisition of the Native languages whether in Calcutta or the Provinces. This, however, is a question which appears to have been disposed of; and a *practical* acquaintance with the local system will be best attained, as at present, on the appointment of the Civilian as Assistant to a Magistrate, and by the examinations which he must pass before he is eligible for promotion. If the theory of Hindoo and Mahomedan law and of Indian procedure be studied in England, His Honor would not exact any further study of law from the Civilian until he commences active duty, though he would prefer that greater leisure be left him in England for juristic acquirements, and that the Native systems were made portion of the course of Indian education.

4. I am to forward herewith opinions on the subject by the Officiating Financial and Judicial Commissioners,* also by Messrs. Thornton, Jones, and Smyth, who, having entered the service by competition without having gone through the *curriculum* of Haileybury studies, judge of the question by personal experience.

* From Financial Commissioner, No. 44, dated 24th March.
From Judicial Commissioner, No. 365, dated 13th July.

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*From* R. N. Cust, Esq., *Commissioner and Superintendent (now Officiating Financial Commissioner), Umritsur Division, to the Secretary to the Government of the Punjab,—No.* 44, *dated* 24*th March*, 1860.

I reply to your letter No. 678, dated 15th current, on the subject of a proposed course of legal study for young Civilians.

2. It is one on which I have not only reflected, but tried practically, to work out. Feeling the miserable want of legal training, I went home in 1855, and entered Lincoln's Inn as a student of law, and in due course was called to the English bar. My friends, Mr. George Campbell and Mr. E. Clive Bayley, did the same at the Inner and Middle Temple.

3. Though I do not regret the experiment, I would not recommend it to others. I soon found that English law differed as much in theory from the jurisprudence which I wished to study, as it does from that justice which I was training myself to administer. I found myself attending daily lectures in five branches of English law,—equity, common law, real property law, civil law, and constitutional law: these lectures went over small isolated portions of large subjects: the knowledge of some, such as common law, was to me useless; the knowledge of real property law pernicious, as creating obscurities where none ought to exist; the study of constitutional law was beside my object, though intensely interesting. In equity and civil law I fancied that I found something that I wanted.

4. I consulted many, and various were the recommendations; the proposition to read in a conveyancer's or *nisi prius* barrister's chambers was a mere joke: the attendance of private lectures in addition to the public would only intensify a mistake, unless the course of lectures was the right one; and I can imagine that a little law, crammed into a narrow-minded student, might be a most prejudicial acquirement, as suggesting doubts, teaching technicalities, and leading a Judge to look upon the administration of justice as an art rather than a duty. From Mr. Austin and Mr. Spencer Walpole I obtained some advice, and the latter gentleman specially appreciated my requirements. The matter ended in my indulging in much desultory reading without any particular scope.

5. What we want is access to those sound principles of jurisprudence which under-lie the superstructure of all municipal codes, which apply to all countries, which are already in force, or should be introduced everywhere; and there is no question that an intelligent study of the Roman civil law will supply that want; to this might be added the perusal of approved text books on evidence, contracts, and mercantile law.

6. At what period of the Civilian's life, and in which country England or India—this ought to take place, is a point which can only be determined by the Secretary of State: there are obviously two periods available, the last year in England which intervenes betwixt the first and second competitive examinations, and the first year in India before the proficiency examination is passed. There will be no difficulty in arranging for law classes and law examination both in London and the Presidency towns: only let them not be converted into mere gladiatorial arenas for discussing moot points, and arranging narrow technicalities, and interpretations of written laws, in which the interest of the suitors is forgotten, and the time of the Judges wasted.

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*From* A. A. ROBERTS, Esq., C. B., C. S., *Officiating Judicial Commissioner, Punjab, to the Secretary to the Government of the Punjab,—No.* 365-2654, *dated* 13*th July*, 1860.

Having attentively considered the correspondence forwarded with your docket No. 676, dated 13th March, on the subject of providing

a course of legal studies for young Civilians, I have the honor toreply as follows.

2. I do not think that any course of legal study should be prescribed for the young Civil Servant after his arrival in this country, save that which our present system of examination of Assistants in law and procedure, before they can be promoted, involves; but I am of opinion that the subject of jurisprudence should have a more prominent place in the examinaton in England than I believe it has at present.

3. Every successful candidate at that examination should certainly be required to pass one year in England in acquiring a practical knowledge of law. and of the working of the courts of law. If a plan could be devised for enabling a young Civilian intended for India, to attend some one County Court regularly for two months, a Magistrate's court for a similar period, and to go on a circuit under the guidance of a practising Counsel, I believe that it would be of great benefit. But he should attend not as an "*auscultator*" merely, but should be required to take notes of the cases which he hears, and to produce a certificate from the Judge or Magistrate of the court which he has attended, and of the barrister whom he has accompanied on circuit, that he has intelligently and profitably employed his time.

4. On his arrival in India he should attend the sittings of the Supreme Court for one month, the Sudder Court for the same time, and also the Small Cause Court. A regular place should be assigned to young Civilians in all these courts. They should make notes and obtain certificates from the Judges or Registers of the courts of having fulfilled the prescribed course There can be no doubt that, if the Judges could be induced to extend their no tice to these young students, it would have the happiest effect. The young Civilian should, meanwhile, go on with the study of the languages; and, as soon as he has passed and has completed the prescribed attendance at all the courts, he should be posted, as now, to some district, and should pass in due course, as now, the examinatian in law and procedure of our local courts.

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*Memorandum on the mode of training junior Civil Servants.*

The great defect I notice in Mr. Howard's proposals is that, though he requires that the principles of jurisprudence be studied for a year in England, he does not suggest any practical legal training in that country. Now, I apprehend that a theoretical knowledge of the principles of jurisprudence, without some experience in their practical application, is of little use, and is, sometimes, I believe, apt (though of course not necessarily) to make men distrust the dictates of common sense. On the other hand, I am certain that a knowledge of the principles of jurisprudence, combined with some experience of their practical application in England, would be of infinite service to officers in this country.

As regards my own case, although I did not have to pass any examination in law, as was originally proposed, before leaving England

for India, yet during the period between my obtaining my appointment to the Civil Service of India in August 1855, and my departure from England in July 1856, I graduated in honors in the law school at Oxford; I also passed a public examination in Justinian and Heineccius, the text-books of a Roman civil law, and studied the Commentaries of Blackstone, and Taylor's Principles of the Law of Evidence under Mr. Stephen, barrister-at-law, the editor of the last edition of Stephen's Blackstone. I may be presumed, therefore, to have had, ere my departure, some slight theoretical acquaintance with the principles of law. I am bound to confess, however, that the principles which I have imbibed, though not altogether useless, are of comparatively little use to me, because I have but little confidence in my application of them for want of practical experience in England. I think, therefore, that whatever be the course of study prescribed, one essential—most essential—feature in that course should be that it should provide for a *practical* as well as a theoretical legal training.

The mode of dispensing justice at the County Courts in England is, as far as I am aware, that is to say from my knowledge of the procedure in both, very similar to the system pursued in this Province. Could not those courts be made a means of giving to young Civilians that practical training under experienced men in England which they cannot obtain out here? They would see the principles of justice which govern English law applied without technicality or formality by a barrister of experience. They would learn the essential principles of the law of evidence, far better than by studying Taylor or Norton; but I would not let them be spectators or "*auscultators*" merely; I would insist upon their regular attendance, and upon their taking notes of cases with their own hand, which notes should be produced at the examination proposed to be held at the end of the year of study. With regard to the training in India, I should say the period recommended by Mr. Howard might be curtailed; the written law of India may be acquired very soon, and six months would suffice for obtaining a sufficient knowledge of the languages. Meanwhile attendance at the Small Cause Court at Calcutta and the Supreme Court might be of use in gaining some experience of the practical application of law in this country; but the sooner a young Civilian leaves the Presidency town the better.

(Signed) F. H. THORNTON,

*Personal Assistant to Judicial Commissioner.*

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*Memorandum on the training of junior Civil Servants.*

From the perusal of the correspondence on this subject, I gather that Government proposes to itself two objects—

(1).—By affording its Civil Servants a legal training to fit them for the efficient discharge of their judicial functions, and thus raise the *status* of Mofussil courts; and

(2).—To render junior Civil Servants efficient within the shortest period after their arrival in India.

I.—The first of these questions has, apart from its public importance, a personal interest for me in common with all the younger members of the Service. We regard with regret the want of confidence which exists among Europeans, and to some extent among Natives, in regard to our courts, and we apprehend that, unless the difficulty be soon grappled with, we shall see the most honorable part of our duties pass into the hands of others.

I mention this in order to urge more strongly the expediency of including the younger portion at least of the present members of the Civil Service in any scheme which Government may adopt for securing a legal training for those who may enter the Service hereafter. Most of us are anxious to acquire the legal knowledge which our position demands, and shall be glad to meet Government half-way in its endeavors to afford such knowledge.

To send any considerable number of young Civilians to study law at Presidency towns seems to me most inexpedient. The inconvenience and loss to the public service would be great; the advancement of the Civil Servant himself would be in many respects retarded; the temptations to idleness, and the difficulty of studying law at a distance from the courts in which it is administered, would make the success of the plan problematical.

Instead of this, I would recommend that Government should afford facilities and hold out inducements to the present staff of Civil Servants to study jurisprudence, and what other branches of a legal education may be fixed upon, during his hours of leisure. from other occupations. If Government were to give its aid to such a course of study by allowing references to be addressed to one of its legal officers in Calcutta, who might be appointed to direct and superintend, as far as advice goes, the studies of young Civilians in the Mofussil, and if, at the same time, yearly examinations were instituted of the same check as those which may be prescribed for new members of the Service, I am sure that there would be no lack of men who would qualify themselves for such a test. In many cases, no doubt, Mofussil study alone would not be a sufficient preparation. The year of furlough in England (taken after seven years) still remains, and would afford ample time for completing that course of study begun in India. An examination in England could easily be arranged for the convenience of those who might employ their furlough in preparing for it.

But in order to the success of such a scheme as I have proposed, adequate inducements must be held out to the students. At present a feeling is abroad that judicial capacity is not the shortest way to advancement. A 'report,' it is said, no matter on what subject, falls immediately under the eye of the higher officers of Government, whereas the excellence or inferiority of judicial decisions may or may not meet with early approbation. To counteract this feeling, I would attach some theoretical advantages to duties strictly judicial. How this could be best done it would fit Government to determine. It has occurred to me, however, that officers chosen for their legal training

shown in examination might be appointed in large cities, &c., with *special jurisdiction in European cases* and in important Native suits. Such posts might be made attractive by higher salary or by the prospect of more rapid advancement.

Whether the course of study prescribed for Civilians shall consist of civil law, &c., or whether any other system of law is preferable, is a question which will probably be decided in England. I can only state my own experience of the utter inutility of the superficial knowledge which I acquired during a year's study of the common law, &c., of England.

The portion of my time which I devoted to the law of evidence has been to me, I think, of much service. I only regret that the rest of my leisure was thrown away on the technicalities of our common law, instead of being given to the study of the general science of jurisprudence.

II.—As to the question how the early period of residence in India can best be spent by the Civilian, I think—

(1).—That the scientific legal training required should be *completed* in England, and the examination passed there. In England there are legal classes, books, tutors, courts, all which could be only imperfectly supplied in India. Besides, Calcutta is not the place to study so abstruse a science. I believe as much might be done in England in six months as in Calcutta in a year.

(2).—That both languages should be taken up together in Calcutta. To allow one to be taken to the Mofussil seems to me likely to afford an excuse for idleness when the Civil Servant proceeds to his station. The Calcutta examination includes nothing which may not be learnt from books alone with the aid of a Moonshee, and it is more likely to be acquired speedily, when studied regularly in Calcutta, than when taken up in a desultory way in the Mofussil. The quickest way to acquire a language is that now adopted, and writing and reading are mastered in Calcutta. Colloquial facility follows naturally by a few months subsequently passed in the Mofussil.

(3).—Mr. Howard states very justly that the whole of one day cannot be given to *one* language, and therefore the student is idle. The remedy is easy. Let the student take up *two* languages *pari passu*, and let him, previous to being reported fit for the public service, be required to pass an examination in Company's law (so called), let one of the Mofussil examinations be dispensed with, or rather passed in Calcutta, and let the other be held after the Civilian has been a year in the Mofussil till his colloquial knowledge of the language and his acquaintance with the customs of the people among whom he has resided. Under the present competitive system one year ought to be the longest time which men accustomed to study should require for both languages; and for Indian law, 15 or 18 months might be allowed; but any time spent in Calcutta above such limit should not be

allowed to count as service. Under the above plan the Civilian would go to the Mofussil ready, by knowledge both of language and law, to plunge at once into Mofussil duties.

(4).— It seems to me most singular that while Hindoostanee is the every-day language of our courts and of common life, Persian and Punjabee or Hindee are the only languages taught in Calcutta. Hindoostanee differs *to-to cœlo* from Persian in structure, and from Hindee and Punjabee in the majority of its roots. I think some provision should be made for this. Attention to Hindoostanee will be doubly requisite now that Punjabee is to be substituted for Hindee. From Persian and Hindee Hindoostanee might in a manner be deduced, but not so easily from Persian and Punjabee. I have often wished that I had studied Hindoostanee when in Calcutta. The Mofussil examinations certainly require a knowledge of Hindoostanee, but only of that of our courts, while even this is often acquired laboriously without the aid of any competent Moonshee.

(Signed) W. B. JONES.

*The 29th July.*

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*P. S.*—In order to render young Civilians efficient as soon as possible, it seems clearly desirable that the present rule by which none of them can hope for promotion within three years, should be abolished. At present even the additional Rs. 100 held out as a reward for passing the higher standard examination, is denied them.

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*Memorandum on the legal education of the junior members of the Civil Service.*

I am glad that the subject of the legal education of young Civilians has been brought under the notice of Government. That education has hitherto been very defective, and improvement is urgently called for.

2. The system of appointment to the Indian Civil Service by competitive examination did not necessarily imply (till very recently) that the young gentlemen so appointed had received any legal education whatever. The successful candidates have hitherto been allowed to proceed to India without being required to make themselves acquainted with either the science or practice of law. Without altogether assenting to Mr. Howard's supposition that "not one of them has ever had even the slightest instruction in law or jurisprudence," (for some of them within my own limited knowledge have attended regular courses of lectures on the principles of jurisprudence,) I agree with him in thinking that the statement is applicable to the greater number of them. It is to be regretted, therefore, that while they have all received a liberal education, their knowledge of the subject of law, which of all others would prove so really useful in this country, should be so defective.

3. Recently, the original proposal of a second examination of the selected candidates in England has been adopted; and those who were

successful at the last examination, in July 1859, will have to pass another examination before being allowed to proceed to India. A very important place has been assigned to the subject of law in this second examination, and I have no doubt the new arrangement will be attended with most beneficial results.

4. What is wanted is not a technical acquaintance with law, but a knowledge of the general principles of jurisprudence, which are common to all times and to all countries, and which pervade the municipal codes of all nations. A knowledge of English law would be almost useless, if not pernicious. The study of law as a science is the object to be aimed at. We want a knowledge of those general principles which will be applicable to the diversified and unforeseen cases which continually present themselves in the course of human affairs, and which, *pro tanto*, remove such cases from the dangerous field of discretion, and bring them in subordination to fixed laws. The study of law, as a science, will further be an excellent preparative to the study of the positive municipal law of India, and will enable that study to be prosecuted with greater benefit and satisfaction.

5. Mr. Howard proposes that the study of law as a science should include constitutional law and legal history, jurisprudence and the Roman civil law, together with a general view of English law, such as is given in Blackstone's Commentaries.

6. It may, I think, be taken for granted that all the candidates who are successful at the first competitive examination will have studied, more or less, English constitutional law and legal history. The high position which is assigned to English history among the subjects of the first examination will always ensure considerable acquaintance with constitutional law, and many of the successful candidates will have studied the subject very carefully and deeply. I would propose, therefore, that no further study of these subjects should be insisted on.

7. I agree with Mr. Howard in thinking that the subjects to be chiefly insisted on are general jurisprudence and the Roman civil law, to which might be added the law of evidence and some acquaintance with Hindoo and Mahomedan law.

8. As regards the plan for giving young Civilians the proposed legal instruction, I think that the method adopted by the Civil Service Commissioners is as good as could be devised. There can be very little doubt that England is the proper place for the study to be carried on; and so long as an examination has to be passed by the young Civilian before coming to India, and his position as to seniority is to be dependent on that examination, there can be no doubt that the study will be prosecuted earnestly and successfully. The opportunities for the study of law are so much greater in England than in this country, and the inducements to study it operate so much more powerfully, that I would strongly advocate the entire study being carried on at home.

9. I would venture to suggest that jurisprudence and Roman civil law should be allowed a place among the subjects of the first competitive examination with a suitable number of marks assigned to them. I

observe that the Civil Service Commissioners are averse to make any change in this respect. I am aware that Lord Macaulay and his colleagues omitted them from the original programme, on the ground that they did not form part of the usual liberal education imparted at our Universities. It would be difficult, however, I think, to assign any valid reasons why Sanskrit and Arabic should be allowed a comparatively high place among the subjects of the first examination, and jurisprudence and law be altogetheromitted. As elements of a general English education, there can, I think, be very little question, that jurisprudence and law would be much more generally useful that Arabic and Sanskrit; and most persons who have had any practical acquaintance with a Civilian's duties in this country would, I think, agree in considering that a knowledge of the general principles of jurisprudence would be much more practically useful in India than a smattering of Sanskrit or Arabic.

10. I should be glad, therefore, to see an acquaintance with the science of law recognised at the first competitive examination. I have no doubt that if a moderate number of marks were assigned to it, many candidates would study the subject and offer themselves for examination in it. Facilities for its study exist at all our Universities, which is not the case with Sanskrit or Arabic. Further, if a candidate, after studying law failed to obtain an appointment, the legal knowledge which he had thus acquired would be much more useful to him in after-life than a smattering of Arabic or Sanskrit under similar circumstances. I am acquainted with several candidates for Indian appointments who have been allured to the study of Sanskrit by the number of marks assigned to it, who certainly would have studied jurisprudence in preference, if it had been equally favored.

11. I think the course adopted by the Civil Service Commissioners, of requiring the selected candidates to attend the courts of justice in England, and to forward notes of the cases which come under trial, will be useful as affording an insight into the forms of procedure and a practical legal training to some extent.

12. The subjects of study recommended by the Civil Service Commissioners appear to be very judicious. I would recommend that the law of evidence, which appears to have been omitted, be included among them.

13. Much will depend on the examiners as to whether the proposed legal study is to embrace a knowledge of general principles, or whether it will descend to mere technicalities and quibbles, which will be of no practical use, and can be made up for the occasion by a process of cramming.

14. Once the young Civilian is out in this country, I am very sceptical as to the benefits to be derived from his being required to pursue the study of law in any of the Presidency towns. I should think that such study is almost certain to degenerate into a merely formal attendance at lectures or examinations and an equally formal final examination passed with ease by a little cramming the night or week

previously. I am afraid that the study of law conducted in the Presidency towns would, in a very short time, be conducted in the same way as lingual studies are at present conducted there, and would soon become as unpopular. The temptations to idleness are so great in Presidency towns that I am firmly persuaded the sooner any young Civilian leaves them the better.

15. I consider that one of the strongest of those temptations to idleness is the apparent indifference with which Government regards its young Civil Servants while in College. No official notice is taken of them whatever. It matters not whether a student is careless or industrious in the prosecution of his studies; it is all the same in the end. Every one passes College sooner or later; and once passed, every one commences his official career on terms of equality. No perceptible difference is made by Government between the student who passes his collegiate course with marked distinction and carries off all the prizes within his reach, and the one who struggles through his examination with difficulty at the end of a year and a half. The subsequent promotion of each goes on in the same monotonous way, and each gets his step when his turn comes. The consequence is that the College tone is very low; very few care how they pass; the majority are careless and indifferent; and the general community are loud in their compliants of the waste of public money in keeping young men loitering away their time in Calcutta and the other Presidency towns.

16. I feel convinced that legal study at the Presidency towns would fall into the same disrepute as that of Oriental languages. It is indeed true that if Government would encourage the study, and hold out substantial inducement for proficiency therein, a healthy rivalry might be established among the students, which would be productive of the most gratifying results. But unless such encouragement is extended, unless a spirit of emulation is excited among the students, unless a man feels that his future prospects may in some degree depend upon his proficency in his studies, the hopes entertained of any real benefit from a legal school at Calcutta would, I fear, be disappointed.

17. I do not see that the young Civilians would derive any benefit from attendance in the Supreme or Sudder Courts in Calcutta, or in the Courts of Small Causes, which they would not derive with much more effect from attendance in the courts of justice in England.

18. The course which I would be inclined to recommend is to send the young Civilian, very soon after his arrival in this country, to a Mofussil station, and there let him learn the practical working of the courts by actual experience. It is to be presumed that he will have brought with him from England a very respectable knowledge of the principles of law. I would send him to a station to give him the opportunity of applying these principles in practice, and of becoming acquainted with his duties practically. He will learn the municipal law of the Province to which he is attached much sooner and more profitably in the Mofussil than in a Presidency town; and by proceeding gradually from the trial of simple to more complex cases, he will

soon become a valuable servant of Government, and be able to afford considerable assistance to the district officer.

19. I would advocate any suitable measure which would make the young Civilians in the Mofussil feel it to be their interest to make themselves acquainted with their judicial duties as soon as possible, and to excel in the judicial as well as in other departments of their profession. It is a great drawback in the junior Civil Service that there is no very adequate inducement to exertion or study, unless the mere pleasure which these alone afford. All the junior members stand upon the same dead-level of equality. All, with very few exceptions, will receive their promotion each in his turn, and to a very great extent independently of his official merits. The tendency of such a state of things is to stagnation. Every one must learn the routine duties of his office; but once that stage is reached, (and it is a very early one), there is no inducement to proceed further.

20. The judicial department especially labors under the evils of this system. There is a prejudice (I don't know how far it may be just) against the department. There is the popular saying that any one is good enough for a Judge, and if fit for nothing else, he will be provided with a Judgeship. Things are not so bad as this; but there can, I think, be little doubt that the judicial line is looked upon with disfavor. There is a feeling that revenue knowledge and an acquaintance with the revenue system of administration are much more likely to secure promotion than any amount of judicial skill or acumen.

21. The consequence is that all young Civilians who have a desire to study at all, and make themselves conspicuous as able officers, turn their attention almost exclusively to the system of revenue administration, to the neglect of their judicial studies, and the consequent detriment to the administration of justice.

22. It would be difficult, I think, to propose a remedy for these evils, and I do not attempt to do so.

23. As regards junior Civilians, I am of opinion that the system of yearly or half-yearly examinations which are now in operation, and must be passed by all Civilians before their promotion, might be beneficially made use of by Government to encourage legal studies, and a practical acquaintance with law even more than they do at present.

24. At present, all that is required is, that a certain fixed standard must be attained before the candidate is passed. As promotion is barred till this standard is attained, there is no doubt that considerable inducement is thus held out to the young Civilian to pass as soon as possible. But there is no inducement held out to pass with as much distinction as possible. The examination as at present fixed is not pitched at a very high standard. I would propose to raise the standard somewhat, and to introduce something like a competitive element into the examination.

25. At present, every young Civilian in the Punjab, and apparently in the other Provinces also, is, with rare exceptions, promoted through the several grades of Assistant Commissioners almost entirely

by seniority alone. This is doubtless a great check to independent study and exertion. Every one feels that there is not much use in undertaking the laborious study of law when little advantage can be expected from it in securing promotion. And the time of young Civilians is so fully occupied in official duties that, when they return from Cutcherry, fatigued and exhausted, they are not likely, without some substantial inducement, merely for pleasure, or for the sake of knowledge *per se*, to commence the study of an abstruse judicial work.

26. To hold out such an inducement, I think it would be advisable if Government recognised the comparative rapidity and proficiency with which the Mofussil examinations are passed as elements in determining the young Civilian's claims to promotion. I would not regard them alone as valid grounds for promotion. General administrative ability, and, doubtless, seniority to some extent, should also be taken into consideration in determining on those claims. All that I would urge is, that the result of the Mofussil examinations should not altogether be ignored (as it would generally seem to be at present) in awarding future promotion to the examinee.

27. I may here perhaps venture to remark that the recent order of the Secretary of State for India, by which promotion is closed to young Civilians appointed by competitive examination until they shall have resided for three years in India, cannot but be attended with very unfavorable consequences, (both in this country and in England), as it lessens still more the inducement to study, which I consider it to be of great importance to increase. It will not altogether have the effect of preventing young Civilians from passing their examination before they have resided for three years in India, as it is an object with every one to get these examinations over as soon as possible, and thus be released, once for all, from the drudgery of future examinations, but it will prove most discouraging to their efforts, and remove an incentive which formerly animated them.

28. These remarks have extended to a much greater length than I intended. The difficulty in the question is to determine the best mode of inducing the young Civilian to prosecute his legal studies *after his arrival* in this country. There will be no difficulty whatever, I should say, in securing a theoretical knowledge of law in England; but how this knowledge is to be maintained and extended after the Civilian's arrival in India,—how he is to be induced to make himself thoroughly acquainted with the law and procedure of our Indian courts, and not rest satisfied with a mere routine acquaintance with them,—these are the difficulties of the problem. They will, I fear, not be overcome unless some more substantial inducements than at present exist are held out for the attainment of excellence and distinction in legal knowledge. A mere prescribed course of study and examination will not alone, I am afraid, remove them, unless the result of the examination is made to bear on the examinee's future career.

29. I have looked at these difficulties from my junior position in the Service in the view in which they present themselves to me without

daring to attempt to solve them. I trust, I shall be excused if I have trespassed on any subjects on which I was not called on to offer any remarks.

(Signed) J. W. SMYTH,

*Lahore, the 2nd August* 1860. *Asstt. Commr.*

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*From* T. PYCROFT, Esq., *Chief Secretary to the Government of Fort Saint George, Judicial Department, to the Secretary to the Government of India, Home Department,—No.* 20, *dated 5th January*, 1861.

I am directed by the Hon'ble the Governor in Council to acknowledge the receipt of Mr. Under-Secretary Chapman's letter of the 25th February last, No. 403, Home Department, transmitting a copy of a letter from the Government of Bombay, dated 26th November 1859, and its enclosures, on the subject of a proposal to provide a course of legal study for Civilians designed for the judicial branch of the Service, and requesting the opinion of this Government thereon.

2. In reply, I am desired to state that the papers which accompanied Mr. Chapman's letter were, on its receipt, forwarded to the Judges of the Court of Sudder Adawlut, who were requested to submit their views on the subject. I am directed to forward the enclosed copy of a letter from their Registrar, embodying the sentiments of the three Judges on the question referred to them.

3. On this reply being returned, the whole subject was considered by the then Governor, Sir C. E. Trevelyan, and a minute recorded by him, under date 4th June last, expressive of his views upon it. In transmitting a copy of that minute, I am instructed to state that the present Government concur in the suggestions and sentiments which it contains, and that they have nothing to add to them.

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*From* C. F. CHAMIER, Esq., *Registrar of the Sudder Court, to the Chief Secretary to the Government of Fort Saint George, Judicial Department,—No.* 45, *dated* 21*st May*, 1860.

Adverting to the Proceedings of Government, dated the 16th March last, I am directed to communicate the opinions of the Judges upon the proposal to provide a course of legal study for Civilians designed for the judicial branch of the Service.

2. The Judges fully agree with the Bombay authorities in thinking that some kind of legal training is now more than ever requisite for those who are to be appointed to the judicial office, and that measures to attain this object ought not to be any longer deferred.

3. Owing, however, to the peculiar constitution of the Civil Service, the early age at which the members are appointed, and the constant requisitions upon their services from the time of their being qualified for public employment, it becomes a question of much difficulty to

determine the period at which they may best be called upon to acquire the legal knowledge necessary to fit them for the bench.

4. On this point the Judges differ from Mr. Howard. They do not think it desirable that the Civilian should, immediately upon his appointment to the Service, be detained in England for the purpose of prosecuting the study of law. They consider that the knowledge of Roman civil law and general jurisprudence which Mr. Howard aims at securing for the Civilian before he enters upon his public career, would be better acquired at a later period in life.

5. The proposition of Mr. Strange, in the 49th paragraph of his letter to the Government on judicial reform, fully meets Mr. Beauchamp's views in this respect. After stating that the young Civilian should be employed during the first seven years of his service, under a Collector and Magistrate, Mr. Strange remarks:—"He should then "make his election for the judicial branch, or the general administration, "or, as the necessities of the Service may demand, the Government "should make the decision for him. The judicial member should then "be required to proceed to England for special training for his profes- "sion. It is the period when the first portion of the furlough to "England may be taken, and I would make the time to be thus em- "ployed two years. In England, he should pursue his studies in those "branches of law which may prove of utility to him in India, that is, "in civil and equity jurisprudence; the laws of contracts and of "torts; the law of evidence; the principles of criminal law; legal "maxims and procedure. He should attend those magisterial and law "courts that may assist him in actual procedure. These studies I "would allow him to prosecute any where in the parent country that "might appear fitting to him. There should be a Board of Examiners "to whom he might at any time apply to direct him in the course of "his studies. Before them he should appear for examination at the "close of the period assigned to him for his course of training, or at any "prior time he may elect. Should he, within the prescribed period, "pass a creditable examination in the required branches of knowledge, "he should be entered as a member of the judicial administration of "his Presidency. His two years of residence in the parent country should "count towards entitling him to pension, but only one year thereof "should be reckoned against him for extinguishing furlough or service. "He will have had the furlough allowance to maintain him. His "passage-money, out and back, should be provided him, and a suitable "appointment should be secured him on his arrival in India. There, a "judicial post should be conferred upon him as soon as practicable, and "no other manner of admission into this line should be permissible. I "would not object to the judicial member being transferred to any other "branch of service for which he might be required; but if so transferred, "he should forfeit his place altogether upon the judicial establishment. "Otherwise, there will be evasions of the rule proposed to secure effici- "ency, by the transfer to the bench of one who may have been long "absent from it. Such are the advantages I propose for the successful "candidate. They would be of considerable importance to the individual,

"and not costly to the Government. The unsuccessful candidate should "have none of these advantages. His two years in Europe should count "against him for extinguishing furlough and service, he should not be "assisted with passage-money, and should run the ordinary risks of "obtaining employment on his return to India." Mr. Beauchamp would give the successful candidate time for total relaxation by extending his leave for a clear period of six months from the date of passing, independently of the time required for his passage; and would during this period secure to him his furlough allowance.

6. Mr. Frere thinks that those Civilians who select the judicial branch of the Service might be encouraged to employ a portion of their furlough to England in pursuing a course of legal study at any of the Inns of Court, and in attending occasionally *nisi prius* trials on circuit, for which he is confident every facility would be afforded them by the English bar. A residence in London for a part of each is, he observes, rather favorable to health than otherwise; and a call to the bar may be obtained, if desired, after the lapse of about three years.

7. The Judges concur in opinion with Mr. Howard that such legal studies as are now generally pursued in this country by young Civilians, after passing in the vernaculars, might advantageously be carried on simultaneously with the study of the Native languages. The works to be read should comprise Norton's Law of Evidence, Mayne's Principles of Criminal Law, some portions of Broom's Commentaries on the Common Law, and all the Revenue and Criminal Enactments. Mr. Frere does not consider it either necessary or desirable that these studies should be carried on at the Presidency. Mr. Beauchamp would place the young Civilian under the Law Professor, as he would then have the advantage of being directed to that which he must master, and of being told what he might for the time pass over in the books in question; and would at once be put in the way of studying on a system, the want of which has proved a serious hindrance to many of the present junior members of the Service.

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*Minute by the* Hon'ble Sir Charles Trevelyan, k. c. b., *Governor of Madras,— dated 4th June* 1860.

The question of judicial training of Indian Civil Servants has of late acquired more than even its former importance owing to the measures in progress for opening the judicial line of the Service to members of the Uncovenanted Service and to the English bar.

After the young men have been selected for the Civil Service, and before they leave England, they ought to pass an examination in the elements of general jurisprudence and of Hindoo and Mahomedan law. This was provided for in the Haileybury system; and the happy influence of Mackintosh's and Empson's lectures may be traced in the superior qualifications of many officers who have adorned the Service. It was also provided for in the scheme for the preliminary training of passed candidates, prepared by Lord Macaulay and his colleagues after the

abolition of the Haileybury College ; and arrangements were proposed by them, in addition, for making the candidates acquainted with the mode of administering the law in England. Practical effect is not being given by the Civil Service Commissioners to the plan of Lord Macaulay's Committee. The Chairman, Sir Edward Ryan, in a letter to me, dated the 18th of February last, says :—"We are preparing a full answer "to the inquiry made of us (from the India House in reference to this "same Bombay correspondence) ; but before we send our answer, we "shall test the result of an experiment we have made upon the candidates "who passed last July their *first* examination. These candidates have, "by our desire, attended different courts of justice, and have made "reports to us of the trials they have heard, which reports we are now "examining. *The art of administering the law*—not the knowledge "of law—is where the Indian Civil Service fail so much. This we are "endeavoring to meet." This part of the subject is now in safe hands, and full justice will be done to it.

Neither do I feel any doubt as to the course which ought to be adopted in reference to the next stage of a Civilian's progress. It would be very unadvisable to detain the young men at the Presidency in order to pass an examination in law. They have had quite enough of a life of mere studentship and examinations, and it is high time that they should enter upon the practical business of their Indian career. My sentiments in this respect are exactly expressed by the Hon'ble Mr. Reeves in the following passage of his minute, dated the 4th of November last :—"Our law is of the simplest kind; the state of society "is wholly inartificial ; there are no legal details of any difficulty to over- "come ; but it is of vital importance that a candidate for public employ- "ment, whether he wishes to be a Judge, Collector and Magistrate, or "Political Agent, should become thoroughly well acquainted with the "manners and customs of the people, as well as with our revenue and "police systems; and I contend with much confidence that this cannot "be effected in any manner so well as by active service as Assistant "Collector and Magistrate, or as a Political Agent. I may, indeed, assert "that the object cannot possibly be effected in any other manner ; as "Assistant Collector and Magistrate, the young Civilian will have his time "well occupied in deciding numerous cases of a simple kind, both civil "and criminal, and in preparing others of a grave and important charac- "ter for the judgment of higher authority, and his powers, discretionary "and legal, will be increased with his experience. This affords all the "judicial practice that is necessary in this country, while the acquirement "of that knowledge of the Native character and the institutions of the "country which is essential to the formation of a good Judge or a good "Magistrate, is secured in the fullest possible degree."

It may be desirable to add an acquaintance with certain legal text books to the examinations which junior Civil Servants have to pass to qualify them for promotion to the more advanced grades of the Service. This knowledge might be acquired (as all diligent young men do now acquire it) by private reading in the Provinces, without staying at the Presidency for lectures. The Code of Procedure, and any portions of

the substantive law which may hereafter be codified, should also enter into the scheme of these examinations.

I cannot, for obvious reasons, support the proposal that, after seven years, Civil Servants should be allowed two years of special furlough to study law in England; but Mr. Frere's suggestion, that Civilians who select the judicial branch of the Service might be encouraged to employ a portion of their existing furlough in pursuing a course of legal study at any of the Inns of Court, and in attending the courts of law, is deserving of attention. The facilities for studying law at home have of late been much increased by the institution of lectures and examinations in connection with the Inns of Court; and Civil Servants who furnish proof on their return to India that they have made good use of their time in this respect, should be rewarded by early promotion.

The sum of my opinions, therefore, is, that the young men should be trained in common until they arrive at that period of their service when they have to make their election between the revenue and magisterial, and the judicial branches of the Service, by being appointed to the office of Sub-Collector and Joint-Magistrate, or to that of Sub-Judge; and that this training should be chiefly of a practical kind, but should combine as much positive knowledge of law and of the art of administering it as may be consistent with other objects. All the functions of this class of public servants partake so largely of the judicial character, that the legal knowledge acquired would always be turned to good account; while those who enter the judicial line could, I am persuaded, have no better preparation for it. Those who have an inclination for this line and intend to enter it would naturally give more attention to their legal studies.

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*From* A. KINLOCH FORBES, Esq., *Acting Secretary to the Government of Bombay, Judicial Department, to the Secretary to the Government of India, Home Department, —No.* 44, *dated* 10*th June*, 1861.

With reference to Lord Ulick Browne's letter dated the 7th July 1860, No. 1405, relative to the legal education of Civil Servants designed for the judicial branch of the Public Service in India, I am directed by the Hon'ble the Governor in Council to forward to you, for submission to the Government of India, the accompanying copy of a letter from the Director of Public Instruction, dated the 17th November 1860, No. 2278, together with transcripts of the minutes which have been recorded by this Government on the subject.

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*From* E. I. HOWARD, Esq., *Director of Public Instruction, Bombay, to the Chief Secretary to the Government of Bombay, Judicial Department,—No.* 2278, *dated* 17*th November*, 1860.

I have the honor to acknowledge the receipt of the Government letter No. 2710, dated 14th August 1860.

2. Under the present system adopted by the Civil Service Commissioners in England, all young Civilians will arrive in India with some knowledge (tested by an examination) of the—

(1).—Rudiments of Hindoo and Mahomedan Law,

(2).—Institutes of Justinian,

(3).—Blackstone's Commentaries,

(4).—Indian Procedure; and also with some practical knowledge of the procedure of English courts of justice, tested by personal notes or reports of cases furnished by them to the Commissioners. This system, according to Sir Charles Wood's directions, is to be carried further when these young gentlemen arrive in India.

3. It will be for Government to determine whether, in the first instance, any separation is to be made between those Civilians who are respectively intended for the judicial and for the other branches of the Service.

4. I recommend that, unless it is found practically inconvenient, all Civilians, whatever their destination, should have a year's legal instruction in India, but that only those intended for the judicial branch should be carried through the further course.

5. If this be approved, it may be ruled as follows :—

(1).—All young Civilians on arrival will be required to attend the Government law school at the Presidency, for at least one year, during which time they will be under the charge of a Judicial Commissioner. Their salary will be as at present. (I would gladly recommend that they should be provided with a bungalow and library for their common use).

NOTE.—The Judicial Commissioner should be one of the Judges of the Sudder Adawlut. It would be his duty to see that the young men are attending to their studies, and to give them practical advice and assistance.

(2).—At the end of the year they will be subject to an examination, conducted by the Government Law Officers, the Judicial Commissioner, and such other persons as Government may think fit to appoint.

(3).—Those who fail to pass the examination will be re-admitted for six months' additional legal study in the law school.

*N. B.*—Separate legal instruction must be provided for the Civilians in the Government law school. The Professorships at present are :—

| | | | Rs. |
|---|---|---|---|
| Held by one Professor. | 1 | Government Law Professorship, salary | 300 |
| | 1 | Ditto ditto ... | 300 |
| | 1 | Perry Professorship of Jurisprudence ... | 269 |
| | | Total ... | 869 |

6. I propose that the two Government Law Professorships should be raised to Rs. 400 each, on the understanding that efficient instruction shall be provided for the Civilians in addition to the ordinary course, and also that if the Professor is a practising barrister, he will permit his Civilian pupils to see some business in his chambers.

7. The Civilian-students should also be permitted to attend the other lectures of the Professors, including the jurisprudence lectures.

8. The object of the special course should be to *deepen the Civilian's knowledge on some leading branches of law, of which he has acquired the rudiments in England.*

(Looking at the terms of Sir Charles Wood's Despatch, I do not consider myself at liberty here to recommend what I should have thought absolutely the best course, but the following may, I think, be adopted).

(4) (*a*).—The law of contracts should be thoroughly studied with reference to general jurisprudence, as in Pothier on Obligations, and the English law, omitting such peculiarities as are inapplicable to the Mofussil,—use being made of the Indian decisions on points arising out of Native usages. The subject of "frauds" and "equitable defences" should be comprised in the course.

(*b*).—The law of evidence (civil and criminal) should be studied in the same thorough and comprehensive manner.

(*c*).—A course of lectures should be delivered on property law, including the important subject of possession, and taking some notice of the tenures of land in this part of India.

(*d*).—The Procedure Act should be lectured on in detail, and the difficult subject of preparing "issues," should be illustrated in a practical spirit by means of the systems at present in force on the several sides of the Supreme Court and the Small Cause Court.

9. These four important subjects would suffice, I think, for a year's course; 1 and 3 might perhaps be despatched in the first half-year, and 2 and 4 in the second.

10. (5).—Besides hearing lectures and preparing for the examination, the students should be required to attend the Small Cause and Supreme Courts, and the Sudder Adawlut, and to report cases, to be corrected by the Law Professors. Without a certificate that this exercise has been satisfactorily performed, no students should be admitted to the examination.

(During all this time the Civilians must, as at present, study the vernacular languages).

11. (6).—Civilians who have passed the examination satisfactorily will be transferred to the Revenue Department until they have passed the second departmental examination under the present rules.

12. (7).—A Civilian intended for the judicial branch of the Service will, after passing the second departmental examination, be attached to a Judge's office as junior Assistant, on a salary, if he has passed in one language, of Rs. 400 a month,

*N. B.*—Judges should be selected for this purpose who are most likely to be able and willing to promote the education of the young gentlemen committed to their charge. More than two Assistants should not be attached to any one Judge.

13. (8).—The duties of the Judge's Assistant will be to make himself thoroughly acquainted with the practice of the court; and, under the direction of the Judge, to draw up analyses of evidence, opinions on cases to be the basis of a decree, and so forth, keeping up at the same time his general studies, and more specially directing his attention to the Statute law of India, the local usages and regulations, and such parts of Hindoo and Mahomedan law as the Judge may consider most practically useful for him.

14. The Judge should report half-yearly to Government on the progress of his Assistant, whose salary should be regulated by his reports; so, however, as not to exceed Rs. 500.

15. (9).—After one year's apprenticeship, the Assistant may be set by the Judge to take evidence and decide on special cases, like the "Master" in the Supreme Court; such decisions to be subject to confirmation by the Judge. This will be the commencement of actual judicial work, and should be marked by an increase of salary.

16. (10).—After the expiration of the second year's apprenticeship, that is, presumably, about five years after landing in India, the Judge may report the Assistant fit for independent employment if he be so minded; otherwise he shall defer such report as long as he may consider the Assistant deficient in the practical qualities requisite for the bench.

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*Minute by the* Hon'ble W. E. Frere,—*dated 20th March*, 1861.

The Chief Secretary sends me the papers first, because I had not had an opportunity of recording my opinion upon the subject; but I find that, strictly speaking, I have detained the papers most unnecessarily, for no opinion is required, as we are directed by the Secretary of State to frame rules and submit them for the information of Her Majesty's Government; and the strictly proper course, therefore, would have been to have submitted the rules drawn out by Mr. Howard to the Secretary of State. But it appears to me that in these rules Mr. Howard has lost sight of the urgent necessity which requires that judicial servants in this country should be more than mere lawyers, since all officers sitting as Judges in the Mofussil act as Jurors as well as Judges; and that, therefore, a knowledge of jurisprudence in its most extended sense, *viz.*, the law of contracts, evidence, property, and tenures of land, and the Code of Procedure, forms but a small portion of what it is advisable the least accomplished Judge should know, and must not obscure or supersede that knowledge which is beyond every thing necessary—a knowledge not only of the manners and customs, but of the prejudices and trains of thought among those whose disputes he has to settle and whose causes he has to try.

A lawyer learns these from his youth up in England. It is a part of his every-day life; and he has, moreover, superior means of information and learning from his practice at the bar or in chambers; or, should the customs and habits be peculiar to any one part of the country, he has an attorney at his elbow, bred and practising among the people, well versed in that of which he happens to be ignorant, and thus he prepares himself for the bench; and, when raised to that dignity, he has the satisfaction of knowing that, if he is not acquainted with any peculiar custom, the lawyers on both sides will take care that he does not err from ignorance or oversight, but that any peculiarity with which the Judge may not be acquainted (the Jury is sure to know it) is made clear to him by explanation or examination of the witnesses. But in this country it is not so: neither the Judge nor the best mere lawyer in the country would probably know that a Lingayet must be lying, if he mentioned any thing as having occurred when he was ploughing, or yoking, or using his cattle on a Monday, nor would he know what inference to draw from the fact of a husband and wife walking along the road, the wife before the husband, or in what case he may infer suicide from a woman being found in a well with her *saree* passed between her legs and tucked up behind, or when to conclude it might be accidental; nor would a Vakeel probably think it necessary to notice it;—yet these, and many other customs and prejudices, ought to be known to the Judge, but can only be learned by constant and observant intercourse with the Natives, such as is ever to be obtained in the Cutcherry, and in the fields and jungles, though but rarely, if ever, to be acquired in the Adawlut. For on the other hand, I have seen a report of a case in the Supreme Court in which the Chief Judge asked a witness whether the deceased (a Cammattee woman) was in her night clothes. It is therefore, I think, quite as necessary that the Civil Servant intended for the judicial branch of the Service should have a long training in the Collector's office, where he might acquire a knowledge of the people, as that he should have a knowledge of jurisprudence generally, or of any of the various sub-divisions of law, not being the law administered in this country, but as enabling him to understand the principles of general or any particular law.

I do not find that young men come to this country now with a much more extended knowledge of law than was acquired by those who left Haileybury with the law medal and attended Assizes at Hartford: nor do I think that more is to be expected or even desired from them. But we will suppose, for the sake of argument, that they all have that amount of knowledge. The question then is, what course should be pursued for their further study? The following is the course I should prescribe:—

All young Civilians from their first arrival should be under the charge of the Chief Secretary, and should, for the first six months, either remain at the Presidency, or be allowed to go to Poona, Surat, Tanna, or any out-station where they could obtain *Moonshees*: at the end of six months, they ought to be able to pass such an examination as is necessary in Hindoostanee.

On passing that examination (or even before it), if the young man otherwise gives promise of ability, he should be attached to the Translator's office, or might be otherwise employed in the Secretariat, the Sudder Adawlut, or Revenue Commissioner's offices, where he might pursue his studies in the language, and at the same time acquire more general imformation regarding the people, country, and Government, than can be obtained when the attention is confined to the study of languages alone.

When at the end of another year, or at the end of eighteen months after their arrival, these young men passed their second examination, they would have such general knowledge of the country as they would find of use in the detail of the office to which they should then be sent.

Another three or four years spent in the Collector's *Cutcherry*, the Superintendent of Police's office, and the Adawlut, not performing the duties an Assistant Judge does now, but in hearing and deciding original suits, translating the more important civil and criminal cases decided by the Judge, and trying light criminal cases, would, at the end of six years from his first arrival in India, give the young man such a knowledge of the country and service, as would enable him to decide in which branch of the Service he would continue his career.

If he chose the judicial branch, he should be allowed leave to England to enable him to perfect himself in law, not as a study—for that could not be accomplished in the time,—but in the practical and mechanical part, walking the Hospitals, as it might be called, to borrow simile for another learned profession whereby he might also enlarge his knowledge of general jurisprudence or of any particular branches of law which he might think advisable. He would then return to the country, I would venture to say, a more efficient public servant than any of his age who could be sent out barristers of three years' standing, but without having first obtained a general acquaintance with this country.

It will, of course, be necessary to make some provision against the leave of absence to England being abused. This might, in a measure, be guarded against by the Chief Secretary's vigilance that the idle and useless should not be allowed the privilege, and by some forfeiture of leave or length of service, if due advantage had not been taken of the privilege. It would also be required that the majority of young men should obtain assistance in the shape of introductions from the India House to the authorities in the law courts and elsewhere to admit them into the offices and enable them to learn the practical working of the courts. Some would be able to procure the introductions for themselves, but others, probably the majority, would require assistance.

This scheme differs greatly from that proposed by Mr. Howard, but not more than is to be expected, when we recollect that the one is proposed by a barrister of the Supreme Court, the head of the Educational Department, and the other by a practical man. I would not be

thought to depreciate Mr. Howard's scheme, nor to value too highly self-education, which so frequently culminates in self-conceit; but it must be clear to the most superficial observers that the scheme proposed by Mr. Howard would only qualify a man for the theoretical part of his work as a lawyer; he would have the practical part and knowledge of the people to learn afterwards, and that probably at a time of life when ethnology so circumscribed becomes distasteful.

The 10th paragraph of Mr. Howard's letter, in which he proposes that, besides hearing lectures, the students should attend the Small Cause Court, the Supreme Court, and the Sudder Adawlut, and report cases, has not escaped my notice; but I do not anticipate much advantage from any such plan, for practically in the Sudder the arrangement will be impossible, except the student be, as I have proposed, attached to that Court or the Registrar's office; and in the other Courts it would be so irksome, that I am confident most students would give it up in disgust.

The Sudder Adawlut is not a court of original jurisdiction, but of appeal. No witnesses are examined in the Court, and only those papers read which relate to the point of appeal. The student therefore, from merely attending the Court, would obtain but a slight insight into the case which was then engaging the Judge's attention; and, unless he had access to the papers of the case itself, through the Registrar's office, his time would, I know, be wasted.

The Supreme Court and Small Cause Court are courts of original jurisdiction, but the whole of the work in those courts is conducted through Interpreters, and I know of nothing more irksome to a man able to understand the witness deposing in his own language, than having to listen to a case tried through an Interpreter, the advantages gained will be more than counter-balanced by the time lost in listening to the translation when the original would suffice.

It is impossible to sketch a course of study equally applicable to all young men even of twenty years of age; but the one I have drawn will, I think, be found to adapt itself to most characters. It is formed in part on personal experience, and on a long observation of the training some of our best servants have undergone, to initiate them into the customs and feelings of the Natives. I have two of our Servants now in my mind of most opposite characters, who underwent in their early training much such a course as I have proposed. They, neither of them, ultimately adopted the judicial branch of the service, but both distinguished themselves: the one is dead, the other still lives an honor to the Service.

There is, I know, one great objection to this plan, and that is the infliction it may be on men of the standing of Chief Secretaries and Revenue Commissioners to have young men who may not take any interest in their duties, or whose tastes and habits may entirely differ from their own, in constant attendance, or a continued charge upon them.

The plan requires that the young men should be earnest in their work, and that their elders should take a lively interest in them; and though this may not always be attainable, and the young men may fail or fall short of what is expected from them, still it is, I think, more likely to be successful than any scheme which keeps men,—otherwise their own masters,—in a state of pupilage and in attendance upon the lectures in this country, where the professors could not be placed in authority over them, for no young men in the Civil Service would brook their control, and where the amount of legal knowledge the young men might acquire would hardly compensate for their ignorance of the people whose lives and interests are to be at their arbitration.

The point to be aimed at is the greatest amount of knowledge of the law administered in this country, and of law in general, which a man can obtain before he is thirty years of age, combined with a knowledge of the people over whom he is placed. The complete education of a barrister will not furnish the latter; for I have no hesitation in saying that no men know so little of this country as the barristers do even at the end of their career; and this I say advisedly, for I have known some of the most distinguished of them intimately. The course to be pursued must, therefore, be one which will give a better knowledge of the people than barristers possess, though it may be with inferior knowledge of exclusively English law; but great accomplishment in that may be abandoned in a country where the Statute law of England is not the law of the land. Indeed, I am inclined to think that a better legal education for men intended for Judges in this country would be obtained in Columbia or Harvard University in the United States of America (if such Professors as Kent and Story are still to be found there), than in any part of the United Kingdom, where the "law of the land" is the main object of study.

I now pass these papers on. I hope my Hon'ble colleague, Mr. Reeves, will find that my scheme embraces the objects he had in view in the 5th and following paragraphs of his minute of the 4th November 1859, which appeared to me to indicate his wish, as it is mine, that the education of young Civilians in this country, whether they adopt the judicial, political, or revenue lines, should be such as to make them thoroughly acquainted with the manners and customs of the people as well as with our revenue and other systems. If the Board are induced to adopt any or all of my suggestions, my time has not been wasted, nor have I detained these papers unnecessarily. If they adhere to Mr. Howard's scheme, I hope it will be found more practical than I fear it is, and that the judicial officers trained under it will have that knowledge of the Natives, their manners and customs, which is essential when the presiding officer in the court is not only Judge, but Jury also, and has, as is too frequently the case in the Mofussil, to depend upon his own knowledge to unravel those difficulties which so often arise during the trial of apparently the simplest case.

*Minute by the* Hon'ble H. W. Reeves,—*dated 26th March*, 1864.

Fully agreeing in opinion with the Hon'ble Mr. Frere, that our judicial officers in this country require a thorough knowledge of the languages and customs of the Natives, and that such knowledge can be gained nowhere so well as in the offices of our Collectors and Magistrates, I am yet disposed to set a very high value on the course of study adopted by the Civil Service Commissioners in England, as well as on the year's study of legal subjects, and the examination proposed by Mr. Howard for all young Civilians on their first arrival at this Presidency.

2. I considered the proposal made by my colleague for allowing young men, who are evidently in earnest in their choice of the judicial department, leave of absence to England for the purpose of prosecuting their legal studies, a very excellent and practical one; and I have the less hesitation in adopting it. I think that at least two of our judicial officers are at this moment studying the law in London with a view to the bar, and I know of two more in this country who have determined on following their example.

3. I would have a partial amalgamation of the plans of my Hon'ble colleague and Mr. Howard.

4. I have no doubt in my own mind that the Civilians now sent out to this country will be found on the whole a great improvement on those who formerly came out. The prize-men and some others of Haileybury were doubtless young men of superior stamp, qualified for shining anywhere; but along with them, until Haileybury was much reformed, we used to have a number of men capable of doing little or nothing. I believe that the competitive examinations and appointments must strike at the root of all incapability.

5. Suposing, then, with Mr. Howard, that our Civilians come out to India with some knowledge of—

(1).—Rudiments of Hindoo and Mahomedan Law,

(2).—Institutes of Justinian,

(3).—Blackstone's Commentaries,

(4).—Indian Procedure; also with some practical knowledge of the procedure of English courts of justice as laid down by the Commissioners, I am of opinion that the rules laid down in the 5th paragraph of Mr. Howard's letter should be adopted, as also the suggestions contained in the 6th, 7th, and 8th paragraphs.

6. The course of study proposed by Mr. Howard in the 4th rule which immediately follows his 8th paragraph is, so far as I am able to judge, suitable and good, and I would adopt it also.

7. I think it highly important that our young Civilians should have abundant opportunity for making themselves acquainted with the subjects recommended for study and examination by Mr. Howard; for every one of them who may have a decided inclination for the judicial line will readily and earnestly avail himself of every such facility afforded

him ; he will be induced to improve himself, and his duties in the revenue and magisterial departments; he will not fail to apply, exercise, and test the knowledge he gains in the course of studies ; and he will so become ripened to take the most ample advantage of that higher study of law which the Hon'ble Mr. Frere recommends for him during special leave of absence to England.

8. Another reason which influences me in giving partial support to Mr. Howard's views is this: I feel that a sound knowledge of the elements of law is necessary to qualify our Civilians to enter upon the duties of even a Collector's office. To do justice to the duties of a Magistrate and Revenue Officer, which involve a daily consideration of every offence in the criminal calendar of evidence, of disputes on the subject of possession, often of tenures, as well as of civil cases, I hardly think a young man, however able, can be said to be duly qualified without such knowledge. I refer to my former observations on this point.

9. I would, therefore, oblige every Civilian to pass through the legal course of study in this country for at least one year, simultaneously with his study of the Hindoostanee language. The study of the vernacular and the departmental examination should follow as now.

10. As at present, the next step should be active employment as an Assistant Collector and Magistrate, and under existing rules.

11. At the end of six or seven years any youth applying for such leave, after deliberate choice of the judicial line, should be allowed to go to England to perfect his legal studies.

12. It will be necessary to accompany the permission to take special leave to England to study, with due precautions and limitations to prevent inconvenience to the Public Service.

13. It may be urged that leave of absence thus recommended is likely to become expensive to the State. Not less than three years is requisite to enable a man to keep the necessary number of terms and qualify himself for the bar. I would give that period of leave in lieu of furlough. But as service after returning from study would have to be continued for a severely long period before final retirement, some indulgence might be allowed to those who may thus early qualify themselves for judicial duty if they desire to visit Europe again for a year or fifteen months.

14. Until the first year's legal examination is passed, I would place Civilians under the Chief Secretary to Government, as the Hon'ble Mr. Frere proposes.

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*Minute by His Excellency the Governor, subscribed to by the Hon'ble Board,— dated 17th May, 1861.*

I thought, at the time when it was first received in England, and I think still, that Mr. Howard's letter of the 6th September 1859 contained a timely warning, and that it was remarkably just in the view

taken of what it was the duty of our Indian Government to be doing. In his letter of the 17th October, he stated his opinion and developed his scheme of reform more fully, sketching the system which he considers to be best for training the young Civilians about to enter our judicial department. I entirely concurred in his remarks and recommendations comprised in the first ten paragraphs of that letter.

But the despatch of the Secretary of State in Council of the 25th May last has somewhat modified Mr. Howard's suggestions, as far as the year's legal training in England is concerned. At the same time it is admitted the existing rules for departmental examinations in this country provide suitable tests of legal training.

The Civil Service Commissioners were persuaded to determine that the study in England of Sanscrit and the vernacular languages of India was not to be subordinate to the acquisition of other knowledge. When it is considered how few must be the years at home which the youth can devote to study, between leaving school and the period when the importance of acclimating him compels those who care for his life or constitution to despatch him to his destination, that determination of the Commissioners was perhaps unfortunate. In that brief interval, to break off from a course of liberal European education and flounder into the difficulties of Sanscrit,—most deserving as this ancient language unquestionably is, at a proper time, of the deepest interest and study,—and further to divert the attention during the last year in England to the vernacular languages of India, was, I presume to think, a mistake.

However, the question which now remains for final decision is, I conceive, as to the precise nature and the mode of legal training to be imparted in India, notwithstanding that, as the Hon'ble Mr. Frere remarks, we are only required by the despatch from home to form rules.

The deficiency which may become apparent, on the student's arrival in India, in his knowledge of the law of contracts, evidence, and property in consequence of his time having been much occupied in the attempt at familiarity, in a short time, with Sanscrit and the Indian vernaculars in England, must, I consider, be supplied by private study in India, and his attainments be tested by a final examination at the Presidency, conducted by the agency suggested by Mr. Howard in his 10th paragraph.

By this arrangement the amount of theoretical knowledge which it is desirable that all our Civilians should possess, for whatever branch of our administration intended, will be acquired. It will also be necessary to provide for their obtaining what is well described by the Hon'ble Mr. Frere as "that knowledge which is beyond every thing "necessary,—a knowledge not only of the manners and customs, but of "the prejudices and trains of thought among those whose disputes he "has to settle."

I would, therefore, propose that all young Civilians should, as suggested by Mr. Frere, be under the special charge of the Chief Secretary from the time of their arrival until they have passed their first

departmental examination, and are entrusted with some subordinate charge in a Zillah. Their time and attention must, in the first instance, be devoted to a brief observation of the proceedings in the Supreme Court, and in the Sudder Court in Bombay, and to acquiring thoroughly the Hindoostanee language at any place selected by the Chief Secretary. On passing their examination in that language they should, while studying the vernacular (Marathee, Gujerathee, Canarese, or Scindee), which may have been selected for them, be attached to the office of a Commissioner or Collector who is moving about in his district, and thus acquire more general information regarding the people, country, and Government, than can be obtained when the attention is confined to the study of language alone.

After passing in their second language they should, as at present, be posted to a Collectorate as supernumeraries, but the Chief Secretary should be responsible that they are not left, as too often happens at present, to loiter away their time at the Sudder station with only a few petty routine duties of an unimproving or irksome nature, but are taken out into the districts by either the Collector himself or an Assistant of standing and experience, and kept constantly employed in such duties, increasing gradually in responsibility as they may be found qualified for.

On passing their first departmental examination they would receive, as at present, a small charge of their own, and in due time would pass their second departmental examination, which should be made to comprise the final examination in the law of contracts, evidence, and property, which I have suggested above.

Thus far the appointed studies of all would have been alike. This ground-work for future fitness for the bench in the judicial department will not have been higher than is desirable for a revenue and magisterial officer, whose duties involve, as the Hon'ble Mr. Reeves observes, "a daily consideration of every offence in the criminal "calendar of evidence, of disputes on the subject of possession, often of "tenures, as well as of civil cases," and whose powers, I may add, will be considerably increased by the proposed code now before the legislature.

I think that no Civilian should be taken for employment in the judicial department until he has been in this country five years; during three of which he shall have been engaged in the active discharge of magisterial and revenue duties; but after that time, any one required by Government for the judicial department, or allowed to select it, should be attached for not less than six months to an experienced Judge, who was likely, from his disposition, actively to promote his improvement. Under that officer's guidance the candidate for the bench should perfect himself in the practice of the court, the Statute or other law, and procedure peculiar to it, and the precedents formed by the printed decisions of the Sudder Adawlut. He should also translate some of the more important civil and criminal cases decided by the Judge; draw up draft opinions to form the basis of decrees, and decide small

original suits; his proceedings during this period should be reviewed monthly by the Sessions Judge, on whose report to the Sudder Judges, and on their approval, he should be appointed an Assistant Judge. I believe that he would thus have received the best preparation for the position that can be devised.

I fully concur in the valuable suggestion of Mr. Frere, approved of by Mr. Reeves, that officers in the judicial department who wish to acquire further legal knowledge by study in England should have facilities for doing so under due precautions against their abuse. I do not set much store by the mere fact of having kept a certain number of terms and technically "qualified" for the bar, and I think that two years' study of particular branches in England by a man who had previously gone through the very severe preliminaries to admission into the judicial department here, which are now proposed, would ensure proficiency not at all less than that of those who have so qualified. Perhaps some arrangement could be effected with the Inns of Court to allow admission to the judicial department here, under the proposed tests, to count, as well it might, towards qualification for the bar in lieu of a year or eighteen months of keeping of terms,—but the point is not a very essential one. What I would propose is, that officers in the judicial department who have been seven years in India, but less than ten, including two years during which they shall have served in the position of an Assistant Judge or Acting Judge, and who wish to go to England to study the law, should be allowed to take two of the three years of their furlough instead of the one to which they are now entitled, provided they produced certificates from the authorities of the law courts, and otherwise satisfied the Secretary of State that they were studying properly during the whole period,—any period during which they neglected to do so not being counted as service. One year of their furlough would thus be left in reserve for them to take at some future period during their service, and the difficulty noticed in the 13th paragraph of Mr. Reeves' minute would be avoided.

If my Hon'ble colleagues agree in this scheme, the Secretary of State in Council should be addressed without delay, and a copy should be sent to the Government of India in answer to their repeated calls.

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*From* A. D. ROBERTSON, Esq., *Secretary to the Government of Bombay, to the Secretary to the Government of India, Home Department,—No.* 171, *dated 9th February*, 1863.

By a resolution passed by this Government, under date the 1st March 1862, a copy of which is herewith forwarded, all young Civilians are required, on their arrival in India, to attend the Government law school at the Presidency for one year, during which period, besides attending the lectures of the law Professors, they are required to attend the Small Cause and High Courts, and to make reports on the cases they may hear in those Courts to the law Professors.

2. Mr. Hore, one of the law Professors, has, at the request of this Government undertaken to examine these reports; it has been resolved to allow him, as a remuneration for this duty, four gold-mohurs per mensem for each pupil whose reports he revises.

3. Provision will be made in the Budget of 1863-64 for the charge at the rate of Rs. 60 per mensem each, for eight young Civilians, and I am desired to request that the Government of India will sanction an addition to the Budget of the current year on account of this charge.

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*Resolution by the Government of Bombay,—dated 1st March, 1862.*

The Hon'ble the Governor in Council being of opinion that it is desirable to lay down rules relative to the legal training of young Civilians, whereby the knowledge which they possess of the law of contracts, evidence, and property, on their arrival in India, may be supplemented by a course of private study, has, with the approval of Her Majesty's Principal Secretary of State, resolved upon the adoption of the following measures.

2. The Governor in Council directs that all young Civilians shall be placed, on their arrival in India, under the special charge of the Chief Secretary, and shall, under his supervision, and while studying the vernacular language, attend the Government law school at the Presidency for one year, at the end of which their progress shall be tested by an examination. During this period the Civilians should attend the lectures of the law Professors, and should in particular extend their study of the law of contracts, evidence, and property, and the Procedure Act. They should also attend the Small Cause and Supreme Courts, and the Sudder Adawlut, and report cases, to be corrected by the law Professors.

3. At the conclusion of the year, and after passing examinations in the vernacular languages, the young Civilian should be posted at a Collectorate as a supernumerary Assistant, but care should be taken that he does not occupy his time at the Sudder station only in a few petty routine duties of an unimproving or irksome nature. He should be taken out into the districts by either the Collector himself, or an Assistant of standing and experience, and be kept constantly employed in such duties, increasing gradually in responsibility, as he may be found qualified to perform.

4 Until the Civilian shall have passed his first and second departmental examinations (which shall remain as at present), the appointed training will be alike for all, and the ground which it lays down for future fitness will not have been more extensive than is desirable for whatever branch of the Service the young Civilian may be intended. Nor will the attainments required of him be greater than should be possessed by a revenue and magisterial officer, whose duties involve a daily consideration of every offence in the criminal calender, of disputes on the subject of possession, often of tenures, and whose pow-

ers will be considerably increased by the proposed code now before the legislature.

5. The Governor in Council further resolves that no Civilian shall be taken for employment in the judicial department until he has been in this country five years, during three of which he shall have been engaged in the active discharge of magisterial and revenue duties, and that after that time any one required by Government for the judicial department or allowed to select that branch of the Service, shall be attached for not less than six months to an experienced Judge, under whose guidance he should perfect himself in the practice of the court, the Statute or other law, and procedure peculiar thereto, and the precedents formed by the printed decisions of the Sudder Adawlut. The candidate for the bench will also be required to translate some of the more important civil and criminal cases decided by the Judge, draw up drafts of opinions to form the basis of decrees, and decide small original suits. During the above-mentioned period his proceedings should be reviewed monthly by the Sessions Judge, on whose report to the Sudder Judges, and their approval, his appointment to the office of Assistant Judge will depend.

6. By these arrangements the amount of theoretical knowledge, which it is desirable that all Civilians should possess, for whatever branch of the administration intended, will be acquired, whilst provision will at the same time be made to ensure their obtaining a knowledge of the manners and customs, as also of the trains of thought and prejudices of the people whose disputes they have to settle.

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*Minute by the* Hon'ble H. S. Maine, *on the employment of young Civilians in the Legislative Office,—dated 2nd March*, 1863.

If my Hon'ble colleagues approve, I propose that one or more of the gentlemen appointed by the Secretary of State to the Bengal Civil Service, who may be studying in Calcutta, be employed from time to time for some hours in each day in the higher work of the Legislative office.

I make this proposal chiefly on educational grounds. The knowledge and experience gained through being concerned in the preparation of only one or two important bills, would, I think, be of very considerable value to any young man commencing a career in the Civil Service. There is almost no part or branch of the law of India into which the researches entailed by such preparation might not conduct him, and the information he obtained would probably be impressed on his mind with a force, and would come home to him with a liveliness, which rarely characterise the acquisition of legal learning from books. The training, too, would be in a peculiar branch of legal education with which few young men even in England have opportunities of coming in contact. The young Civilian obtains, before he comes out, no contemptible acquaintance with the principles of law. In the Mofussil he gains experience with which it is impossible to

dispense in applying legal rules to actual facts. But the reduction of legal rules to writing, and their consolidation into orderly bodies of law—a process which is going on in India faster than in any other country—constitute an art by itself, and with this I propose that these young men should familiarize themselves in the interval between the other two stages of their legal training.

I offer this recommendation also as a means of adding to the efficiency of the Legislative office. That office does not at present include any body between the Deputy Secretary and the ordinary clerk. The Secretary has usually his hands full, and can of course attend to but one piece of heavy work at a time. It is, however, often desirable that the materials for two or three bills should be in the course of collection at the same time, and the services of one or two thoroughly educated persons are needed to digest them, and describe the results in form of précis.

Ordinarily, I should propose to select for these duties the gentleman or gentlemen who obtained the highest number of marks *in law* in the *second* examination at home. The law is the department of study to which the Civil Service Commissioners attach the greatest weight, and I am myself aware, from having seen the papers last summer, that several of the gentlemen examined showed remarkable knowledge and capacity.

Some consideration is required as to the best way of making the employment of these gentlemen in the Legislative office harmonize with their study of languages. Shall they be called in without reference to their having satisfied, or being likely to satisfy, the ordinary language tests? Or shall they be only employed after having passed in one language—or not till they have passed in two? I leave these questions to those of my colleagues who are more familiar than I with this part of the training of young Civilians.

I think that some additional allowance should be made to the gentlemen thus employed, but this is a point for the consideration of the Financial Department. On the one hand, it must be remembered that the expenses of living in Calcutta are heavy, and that it is understood to be often an object with young Civilians to pass through their educational course as rapidly as possible with the view of escaping from these expenses. Moreover, if these gentlemen are employed before they have satisfied the language tests, their chance of obtaining a gratuity is somewhat diminished, and, even if they are not called in till they have passed in two languages, they have a slighter prospect of gaining those further gratuities which are obtainable through passing in Honors. On the other hand, it may be hoped that this system, if successful in the Legislative office, may be extended to other departments, and this extension will be difficult if the expense is at all considerable.

I am authorized to state that the plan of employing young Civilians in the Legislative office has the sanction of the Governor General.

*Minute by the* Hon'ble Sir Robert Napier, k. c. b., *President in Council,—dated 3rd March*, 1863.

The object proposed in Mr. Maine's note is no doubt valuable, and I should think the best way of obtaining it would be the employment of the young Civilians in the manner proposed, after they have passed the language tests necessary to lead them into employment, and subject to the same remuneration as they would receive in learning their duty in the lower grades of every other department.

To open a new kind of educational course, in addition to those already prescribed, might interfere with the indispensable language qualifications, and might by some be looked on as an additional and unexpected test, though the wiser and more studious might regard it as an honor and a privilege, and profit by it, without neglecting other things.

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*Minute by the* Hon'ble Sir Charles Trevelyan, k. c. b.,—*dated 3rd March*, 1863.

Mr. Maine's proposal offers very important advantages. The most remarkable crop of Indian statesmen ever produced was by cultivation of this sort in Lord Wellesley's office. In the present day jurisprudence is the prominent object; and where could the young men have an abler master than our colleague? But the matter has, as observed by Sir R. Napier, an important bearing upon the examinations which young Civilians have to undergo, not merely the first or *language*, but also the second and third or *service* examinations,—and it is, therefore, advisable that the subject should be referred to the Board of Examiners who will consider it in their two Committees, which include several experienced Civil Servants and others who will be able to give good advice on such a question.

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*Minute by the* Hon'ble H. S. Maine,—*dated 4th March*, 1863.

I understand that it is proposed to refer my minute on the employment of young Civilians in the Legislative office to the Board of Examiners. If so, these papers had better be referred with them.

We ought to be quite sure, when we send young Civilians to the lectures of a law Professor, that they will find themselves under a teacher worthy of their already acquired knowledge. The Bombay Government is perhaps not aware that not a few of these gentlemen bring out a considerable stock of elementary legal knowledge, and have received instruction from some of the best legal teachers in England. Care must, therefore, be taken that they are not led to institute unfavorable comparisons between their Indian and English instructors, and certainly they should only be asked to attend lectures specially prepared for them —not those intended by the Professor for his ordinary audience. I make these remarks without having any knowledge of actual inferiority in the law Professors at the Presidency towns. Indeed, I know that the gentleman who officiates at Madras is a very able man, and the Secretary

speaks highly of the Bombay law Professor. I merely mean to call the attention of those, who are fixing a general rule, to the fact that the smallness of the Indian bars prevents our having complete security for capacity in a law Professor.

At best, I think that the attendance at lectures will be a very inferior training to attendance in various departments. The taking notes of cases actually before courts of justice is, however, an advantageous practice, and this duty might be imposed on those of the young Bengal Civilians who are not employed in the Legislative office or elsewhere. But I quite agree with the Secretary as to the doubtful usefulness of attendance in the Small Cause Court. What possible advantage can be gained through listening to the cross-examination of Native witnesses through an interpreter by fourth-rate attorneys before a second class Judge? Probably the rule has been copied from that of the Civil Service Commissioners who permit probationers to attend in a County Court as an alternative to Westminster Hall, but that is only for the sake of making legal study possible in the country, where a County Court is often the only tribunal accessible. The only courts in which young Civilians can derive any benefit from attending are the various departments of the High Court exercising appellate or original jurisdiction. Attendance in the Registrar's or Legal Remembrancer's office would be even more profitable.

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*Minute by the* Hon'ble Sir Charles Trevelyan, k. c. b.,—*dated 5th March*, 1863.

I also should have my criticisms to make, the first of which would be that all spirit and genius would be trained out of the young men by such an elaborate pupilage continued so far into what ought to be active life, but the Government of Bombay has "resolved upon the adoption" of the measures "with the approval of Her Majesty's Principal Secretary of State." The matter, therefore, is not in our power, and all we have to do is to sanction the insertion of the charge in the Budget as requested.

On a large view, this perhaps is the best thing that could be done, for, in order that the local Governments may interest themselves in the improvement of their young Civilians, they must be allowed considerable discretion in the choice of the measures to be adopted for the purpose, and although mistakes may be made, we shall on the whole be gaining experience and moving onwards.

The Bombay Government should be asked to make us acquainted with the results of the measures adopted, as well as with any changes that may hereafter be made in the measures themselves, and the papers should be sent to the Board of Examiners *for information.* They may be sent *in original to be returned after perusal.*

*Minute by the* HON'BLE H. B. HARINGTON, C. S.,—*dated 5th March*, 1863.

I quite concur that the subject of these papers* should be referred for the opinion of the Board of Examiners at Calcutta before any steps are taken for altering the system now in force on this side of India in respect to the junior members of the Covenanted Civil Service while engaged in prosecuting the study of the Native languages, in some two of which, according as they stand appointed to the Lower or the Upper Provinces of the Presidency of Bengal, they are required to pass an examination, before they are considered qualified to enter upon their public duties, or allowed to undertake any public office.

The unsatisfactory position, social and otherwise, of the junior members of the Civil Service attached to the Presidency of Bengal, while carrying on their studies in Calcutta, attracted my notice some time ago, and I have long felt a strong desire to do something which should improve that position. I annex an extract bearing on the subject, from a note which I recorded last year, when the question of reducing the number of Commissioners in Bengal was under consideration. My Hon'ble colleagues will perhaps not object to a copy of this extract accompanying the papers which it is proposed to send to the Calcutta Board of Examiners. The subject is no doubt a very difficult one, and, as noticed by our President, it involves several important considerations.

The measures in force at Bombay for the legal training of the junior Civilians of that Presidency having been introduced with the approval of the Secretary of State for India, are, as observed by Sir Charles Trevelyan, beyond our power, and all that is left for this Government to do is to sanction the addition to the Bombay Budget for the current year of the charge considered necessary for carrying out those measures, though I think with Sir Charles Trevelyan that we may properly ask the Bombay Government to keep us informed of the result of the measures introduced by it, and of any changes from time to time made therein.

The great objection which I should have to extend the Bombay system to this Presidency, is that it would oblige every young Civilian to reside a twelve-month in Calcutta, which in very many cases I should think undesirable and hard upon the young men; but I will defer further remark upon the Bombay arrangements, and on the proposition of my Hon'ble colleague Mr. Maine, which, so far as it goes, has my hearty concurrence, until we have before us the opinion of the Calcutta Board of Examiners.

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*Extract from a note by the* HON'BLE H. B. HARINGTON, *dated 20th May*, 1862, *regarding the reduction in the number of Commissionerships in the Bengal Division of the Presidency of Fort William.*

It has occurred to me very forcibly, in considering the question now before the Government, that great benefit would result if one or more

* Minute by the Hon'ble Mr. Maine on the employment of junior Civilians in the Legislative Department of the Government of India, and resolution of the Government of Bombay, and other papers relating to the employment of junior Civilians in that Presidency.

of the junior members of the Civil Service were attached, immediately on their arrival in the country, to every Commissioner's office.

These gentlemen, on coming to Calcutta, take up their abode often at some second-rate boarding-house or hotel, where they are thrown into society the members of which, though they may be very respectable, are not the presons from whom we shouldw ish our young Civilians to derive their first impressions of Indian life and society, or of the people and the country. In this way they pass several months, drawing a large salary the whole time, in return for which they do nothing, not more, in fact, than if they were not in the service of Government. The time is spent in acquiring, as it is supposed, such a knowledge of two of the Native languages as will enable them to discharge the duties of Assistant to a Magistrate and Collector, that is, so far as a knowledge of the vernacular languages is concerned. But this is very far from being the case. The books they have been reading in Calcutta have not only given them no insight whatever into the kind of business which as Assistants to a Magistrate and Collector they are expected to perform, but on joining their appointments they find that they cannot understand the simplest petition or proceeding in the language of the court or revenue office in which they are employed. They are of little use to the officer whom they have been sent to assist in the discharge of his duties, and it is some time before they can make themselves independent of the Native officers, with whose aid they carry on their work, and who are only too glad to keep them, as long as possible, in a state of thraldom.

The case would be very different if, on their arrival, these gentlemen were at once attached, as proposed by me, to a Commissioner's office. The education which they have received, their well-trained minds, and the qualifications which they have shown themselves to possess, would render them most useful in various ways to the Commissioners to whose offices they were attached. They might be employed in drafting the numerous letters and reports which annually issue from the Commissioner's office. In the return to which I have before alluded, the number of letters written and answered in one year is put down at 20,249. Much of the routine business of the Commissioner's office might be performed by them under the Commissioner's supervision, and in a very short time they would be able to prepare reports of cases for his orders, and translations of papers for his use. In these ways their services would be utilized, and they would at once be placed in a position in which they would be able to render some return to the Government for the salaries received by them.

The benefits which such an arrangement would confer upon the young Civilians themselves would be very great. In reading up the correspondence of the office, in drafting letters and reports for the Commissioner, and in preparing reports of cases and translations of papers for him, they would be really obtaining an insight into the work which was before them; they would be making themselves acquainted with the nature of the duties which they would have to perform when

transferred to active service; they would be acquiring a knowledge of the different classes of the people over whom they were shortly to be placed, and would be learning their habits and customs. The official atmosphere in which they would move, and their daily intercourse with the Native officials, would materially assist them in their study of the languages, particularly the colloquial part, and, in addition to all this, they would enjoy the great advantage of constant official intercourse and association with the able and experienced men by whom the office of Commissioner is invariably found to be filled.

Of course, no young man so employed should be transferred from the Commissioner's office as Assistant to a Magistrate and Collector, and called upon to decide cases, until he had shown by an examination in the language in use that he possessed a competent knowledge of that language; and in order that he might be able to acquire this degree of knowledge within a reasonable time, it would be proper that he should be able to devote a certain number of hours each day to the study of the same. This could be easily arranged without interfering with the duties which he would be expected to perform in the Commissioner's office.

When an officer thus trained, after passing the prescribed examination in the Native languages, entered upon his duties as an Assistant to a Magistrate and Collector, he would do so with confidence and with pleasure to himself. In most cases he would be found equal to his work, and, what is of scarcely less importance, he would, from the outset of his career as a Judicial and Revenue Officer, be quite independent of his Native officials, thus presenting a remarkable and most favorable contrast to the present state of things on the occasion of a young Civilian joining his first appointment.

The arrangement proposed by me would entail no expense upon the Government. The gentlemen attached to the Commissioners' offices should draw the same monthly salary as is drawn at present by the junior members of the Service while engaged in studying the languages, that is to say, Rs. 250 as salary and Rs. 80 as house-rent, until the examination in one language had been passed, and, afterwards, Rs. 300 as salary and Rs. 80 as house-rent. They should also receive the usual allowance for Moonshees. These emoluments in the Mofussil would go very much further than they do in Calcutta, and would enable the recipients of them to live very comfortably and respectably.

It may be objected to the arrangement which I have suggested, that so soon as one of the attachès to the Commissioner was becoming really useful to that officer, he would be removed to active employment, and that this would cause much inconvenience to the Commissioner; but if three or four junior Civilians were attached to every Commissioner's office (and the number of new arrivals in each year will probably admit without difficulty of a supply to this extent being constantly kept up,) they would be in different stages of training, and as the most advanced went off, the next best qualified would take his place, and so on.

*From* J. V. S. WYLLIE, Esq., *Under Secretary to the Government of India, Home Department, to the Secretary to the Board of Examiners,—No.* 1739, *dated* 18*th March*, 1863.

Letter from the Government of Bombay, No. 171, dated 9th February, with one enclosure.
Resolution of this date.
Minute by Mr Maine, dated 2nd instant.
Ditto by the President in Council, and Sir C. Trevelyan, dated 3rd ditto.
Ditto by Mr. Maine, dated 4th ditto.
Ditto by Sir C. Trevelyan, dated 5th ditto.
Ditto by Mr. Harington, dated 5th ditto.
Extract from a note by Mr. Harington, dated 20th May 1862.

I am directed to forward to you the papers noted on the margin, and to request that the Board of Examiners will favor the Hon'ble the President in Council with their opinion, in detail, on the measures discussed therein, for the training, especially in legal knowledge, of young Covenanted Civilians.

The return of the papers is requested.

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*Resolution by the Government of India, Home Department,—dated* 18*th March*, 1863.

READ letter from the Secretary to the Government of Bombay, No. 171, dated the 9th of February, requesting sanction to an addition to the current year's Bombay Budget of a monthly charge of Rs. 480 for the legal education of young Covenanted Civil Servants, and forwarding a resolution on the subject of such education.

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REMARKS.—The measures in force at Bombay for the legal training of the junior Civilians of that Presidency having been introduced with the approval of the Secretary of State for India, the insertion of the charges in the Budget as proposed must be sanctioned.

The Hon'ble the President in Council is, however, of opinion that this Government should from time to time be informed of the result of the measures in question, and of any changes that may from time to time be made therein.

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No. 1740.

ORDERED, that a copy of the letter noted above be sent to the Financial Department, with a copy of these remarks, for the necessary orders in respect of the addition to the Budget.

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No. 1741.

Ordered, also, that a copy of the above remarks be sent to the Government of Bombay, in reply to the letter therefrom, for information and guidance.

*Memo. from* E. H. LUSHINGTON, Esq., *Secretary to the Government of India, Financial Department,—No.* 1239, *dated* 28*th March*, 1863.

The Hon'ble the President in Council is pleased to sanction an additional grant of Rs. 1,440 to the Bombay Budget for 1862-63 under F. IX., "Miscellaneous," to meet the charge for three months of that year for the legal education of young Covenanted Civilians. His Honor in Council further directs that the charge for 1863-64, amounting to Rs. 5,760, be provided in this Department in the Bombay Budget for that year under the above head.

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Copy sent to the Home Department, the Auditor-General of India, the Deputy Auditor and Accountant-General and Civil Pay-Master, Bombay. Also to the Bombay Government for information.

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*From* A. J. ARBUTHNOT, Esq., *Chief Secretary to the Government of Fort Saint George, Judicial Department, to the Secretary to the Government of India, Home Department,—No.* 905, *dated* 10*th June*, 1863.

His Excellency the Governor in Council has had under his consideration the necessity of providing some adequate means of training, for their future duties, such of the Covenanted Civil Servants of this Presidency as are destined for employment in the judicial branch of the Service. For some years past the judicial offices which in this Presidency have been filled from the Covenanted Civil Service have been the three Judgeships of the late Sudder Court—now the appellate branch of the High Court—20 Zillah Judgeships, and 10 subordinate civil and criminal Judgeships with powers similar to those exercised by the Principal Sudder Ameens. There have also been occasionally two or three Assistant Judges appointed to aid the Judges of some of the heavier Zillah courts in reducing the arrears of those courts. Of late, partly owing to the numerical strength of the Civil Service having been much below its requirements, and partly for economical reasons, the work formerly done by Assistant Judges and by some of the subordinate civil and criminal Judges has been transferred to Principal Sudder Ameens; and last year the remaining subordinate Judgeships —then only six in number—were, with one exception, converted into Courts of Small Causes established under the provisions of Act XLII. of 1860. Hitherto, the majority of the Zillah Judges have previously held the office of subordinate Judge or Assistant Judge, but not always; and there are several instances of a Sub-Collector being promoted direct to a Civil and Sessions Court without any special judicial training. The subordinate Judges, Assistant Judges, and, latterly, the Judges of the Courts of Small Causes have been usually taken from the grade of Head Assistant Collector and Magistrate; the appointment in their case, as in the case of Revenue Officers appointed direct to Zillah Judgeships, not having been preceded by any special training. The want of such a training has long been recognized; and something has of late been done towards supplying it, by the prominent place which is given to legal studies in the second examination which the selected candidates for the Civil Service

are required to pass before leaving England. They are then required to prove their acquaintance with the general principles of jurisprudence as laid down in the Institutes of Justinian and Bentham's Treatises on Legislation, Civil and Penal. They have also to pass in Blackstone's Commentaries, Vol. I, MacNaghten's Hindoo and Mahomedan Law, the Indian Penal Code, and the Codes of Civil and Criminal Procedure ; and to furnish a certain number of reports of cases heard by them in a court of justice. Moreover, all Assistants, before they can be promoted, are now required to pass an examination which, besides testing very thoroughly their ability to transact business in the vernacular languages, guarantees a fair knowledge of the Regulations and Acts applicable to the duties of a Magistrate and of a Collector of Revenue, as well as some acquaintance with the law of evidence, which has recently been included in the scheme. But these measures, though important steps in the right direction, are not enough. A more complete training is needed for the responsible office of Civil and Sessions Judge, and scarcely less so for that of Judge of a Court of Small Causes, which at present is the lowest grade of judicial office filled from the Covenanted Civil Service of this Presidency. In regard to the Civil and Sessions Courts, it is not too much to say that the efficiency of the Judicial system of the country depends more on the competency of the Judge of these courts than of any others! On the civil side of the court, their decisions in the great majority of cases are practically final ; while, on the criminal side the administration of criminal justice throughout a district is paralyzed by the inefficiency of the Sessions Judge. It cannot be said that the antecedent employment of a Civilian in the office of Assistant Collector and Magistrate is sufficient to qualify him for the office of Judge, even with the aid of his previous legal studies. As a practical training it is not only confined to one branch of a Judge's duties, but it is open to the objection that there is no supervision or check on the inefficiency of the novice in judicial investigation, beyond that which is afforded by the appellate tribunal. Loose habits of investigation are thus formed, which no amount of subsequent experience will effectually remove.

2. It is certainly very difficult to devise any satisfactory mode of practical training for judicial functions, where practice as an advocate is out of the question, except to a limited extent, and that only on the criminal side of the court. Various schemes have been proposed of late years for meeting the difficulty. So far back as 1842,* the Indian Law Commissioners laid before the Government of India proposals for separating the judicial from the revenue branch of the Service, and giving to each candidate for the former a sort of judicial apprenticeship by attaching him to a court as Official Assessor, in which capacity he should sit with the Judge on the trial of cases, civil and criminal ; attending closely throughout the conduct of the cause, and giving his opinion " upon every " matter coming up for decision ;" which opinion, however, " should have " no legal effect, and, indeed, no other effect than such moral influence " as the training and character of the officer delivering it, and the argu-

* Letter from the Indian Law Commissioners to the Governor General of India, 2nd July 1842.

" ments by which he might support it, should produce upon the mind of " the Judge." The Commissioners further proposed that the Assessors should be occasionally employed in the ministerial duties now left principally to the ministerial officers of the court, and so obtain an insight into the practical working of the court in all its details. It was also suggested that they should be occasionally deputed for the purpose of conducting local investigations connected with cases depending before the Judge. It was pointed out that upon the plan proposed, the probationer, when employed as an Assessor in the trial of cases, civil and criminal, would actually go through all the duties of the judicial office, not excepting that of deciding; but that the decisions having no legal weight, would, if erroneous, have no evil influence on the suitors or parties before the court; and that, while thus engaged under the guidance of an experienced officer in the operation of weighing evidence, of applying the principles of the law to the facts which the evidence establishes, and eliciting from the evidence the facts which form a proper basis for the application of the principles of law, he would " derive all the benefits of real experience *without inflicting upon* " the suitors any of those evils to which judicial inexperience gives " rise."

3. A suggestion very similar to the above was laid before the Bombay Government by Mr. Howard, the present Director of Public Instruction in that Presidency, in 1859,* adopted from a system which is said to prevail in Prussia, where every passed law student is sworn in as an *Auscultator* (hearer or apprentice to the law) at one of the inferior tribunals. " Here, under the instruction of some member " of the College of Judges, to whom he is as- " signed as a pupil, he familiarizes himself with " the whole course of judicial business, from " the office of simple clerk or writer in the several bureaus, up to that " of the Judge. He makes digests of the cases before the court, with " detailed argumentations, and his own conclusions thereupon, for the " opinion of the Judges. He makes reports and protocols, and takes " down evidence, draws up and registers proceedings for the use of the " court. He acts as clerk to the Magistrates in criminal proceedings, " and learns to draw judgments and decrees both in civil and criminal " matters."

* Letters from Mr. E. J. Howard, Director of Public Instruction, to the Secretary to Government of Bombay, dated the 6th September and 17th October 1859, printed in the sixth Report of Her Majesty's Civil Service Commissioners,—Appendix, pp. 397 to 404.

4. In the same year, 1859, the Madras Judicial Commissioners, in their report,† " on the evils in the present sys- " tem of judicature and on the means whereby " they may be most effectually remedied," recommended that the office of Registrar to the Zillah courts should be constituted " with the view of affording to the judicial branch of the " Covenanted Civil Service that training which they cannot obtain by " practice at the bar, and of relieving the courts from the mass of merely " ministerial work which the Judges are now called upon to perform."

† Page 7, paragraph 53.

The duties of this officer, the Commissioners observed, should be purely ministerial, and should comprise the supervision of pleadings, the execution of decrees, the issue of processes, &c., &c. "He should perform all "duties of a strictly ministerial character which are now thrown on the "Judge. He should look for promotion to the bench of the Zillah court, "and service in the office of Registrar should for the future be an indis- "pensable step to promotion to the judicial bench."

5. The plan which on full consideration the Governor in Council would wish to adopt experimentally in this Presidency embraces the leading features of the several schemes above described, with the addition of including in the course of practical training, practice at the bar of the court in the capacity of Public Prosecutor. The measures which he would recommend are as follows:—

*1st.*—That every Covenanted Civil Servant who may desire employment in the judicial branch shall, while prosecuting his studies in the Native languages on his arrival in the country, attend a course or courses of lectures in law so arranged as to be supplemental to the course prescribed for the second examination in England, and shall pass an examinaton therein.

*2nd.*—That the junior Civil Servant shall thereupon be employed not less than three years in the revenue branch of the Service, wherein, as the Madras Commissioners observe, he may obtain useful knowledge of systems of tenure, and of the manners, habits, and feelings of the people, together with practical experience of the duties of a Magistrate.

*3rd.*—That, after passing three years in the revenue department, any junior Civil Servant who may be selected for the judicial branch, shall, on a vacancy occurring, be appointed Registrar and Public Prosecutor in a Zillah court, in which capacity he shall perform the functions of chief ministerial officer of the court as proposed by the Madras Commissioners, and shall also conduct the prosecution in all criminal cases tried at the monthly Sessions; and, further, during the first year of his employment as Registrar, shall sit with the Judge at the trial of a certain number of suits, original or appeal, preparing full notes of each case, as well as the draft of a decree in each, which shall be forwarded periodically to the Judges of the High Court for inspection. He should also be employed as a Commissioner for the examination of witnesses, or for holding local investigations under Sections 175 and 180 of the Code of Civil Procedure.

*4th.*—That after a certain time, to be hereafter named, no Covenanted Civilian shall be appointed to the office of Judge, or of Registrar to the High Court, who has not served at least two years in the office of Registrar of a Zillah court.

*5th.*—That each Registrar of a Zillah court, during the first year of his service as such, shall be considered to be a probationer; and that his confirmation in the office shall depend upon the recommendation of the Judges of the High Court, based

upon the inspection of his notes of cases and on the reports of his work periodically furnished to them by the Judge of the court in which he is employed.

6. The Governor in Council would attach to each Registrarship a salary of Rs. 800 a month, of which only Rs. 700 should be drawn during the year of probation; and I am directed to request that authority may be granted for the creation of ten such appointments; the number to be increased hereafter, if the measure should prove successful. I am also to request sanction for the appointment of a law lecturer on a salary of Rs. 300 per mensem, for the purpose of completing the theoretical instruction of the junior Civil Servants on their arrival in the country. It is desirable that these young gentlemen should be formed into a separate class, distinct from the classes which attend the Professor of Law at the Presidency College. The present Law Professor would be unable to undertake the teaching of a separate class; and even if the two appointments should hereafter be held by the same person, separate remuneration must be assigned to each.

7. The Governor in Council trusts that these recommendations will meet with the favorable consideration of the Government of India. The present appears a favorable time for dealing with the question, and the present position of the judicial administration renders it of great importance that its settlement should no longer be delayed. The Chief Court of appeal and revision has very recently been strengthened by its amalgamation with the Supreme Court. Measures for improving the qualifications of the District Moonsiffs, Pleaders, and Principal Sudder Ameens, have been in operation for some time past; but as yet little has been done to ensure the efficiency of the Covenanted judicial officers. The probable consequences of this neglect, and the embarrassment in which the Government will be placed, if it be persisted in, are forcibly stated in Mr. Howard's letter, to which allusion has already been made, and in which he shows that, sooner or later, the result of the present system will be, to exclude Civilians from the bench, not in favor of English lawyers in whose behalf the agitation against the judicial arrangements of the Indian Governments has been hitherto carried on, but in favor of Natives and East Indians specially educated for the judicial office. The Governor in Council sees every reason to think that in the new class of junior Civil Servants appointed by competition, the Government have excellent materials for the department of the Service now under consideration, provided only that they be afforded suitable means of qualifying themselves. It appears to him that such means will be furnished at a moderate cost and with little or no disturbance of the general arrangements of the service by the plan now submitted. It is free from the objection which, it may be assumed, has prevented the adoption of any of the schemes hitherto proposed, *viz.*, that while they entail additional expense, no definite service—none, at all events, which could not be secured at a smaller cost—is rendered to the State by the candidate for judicial employment during his judicial apprenticeship. This objection, His Excellency in Council would ob-

serve, is in a great measure removed by the proposed employment of the Registrars as Public Prosecutors. No criminal court should be without such an officer; for it is altogether inconsistent with the functions of a Judge that he should be required to conduct the prosecution of persons tried before him. The Registrars, moreover, will relieve the Judges of ministerial work, which now occupies much of their time and seriously hinders them in the performance of their proper duties. Whether, therefore, we look to the immediate improvement of the existing tribunals, or to the prospect of raising up a better qualified class of Judges than those whom the Civil Service has hitherto furnished, the Governor in Council cannot doubt that the additional charge which it is proposed to incur, will be a judicious expenditure of public money. It may be said that the same want is felt in the other Presidencies, and that whatever remedy is applied, should be applied generally; but the Governor in Council hopes that this consideration will not be permitted to delay the adoption of the measures which he desires to introduce, for the purpose of furnishing the Chief Courts in the Provinces of this Presidency with well-trained Judges.

8. I am directed, in conclusion, to submit an application in the prescribed tabular form, for sanction, for the charge now proposed. Of the entire cost, which, allowing for a certain number of probabtioners on the lower scale of salary, will be under Rs. 1,00,000 per annum, more than one-half will be met eventually by the reductions which have been ordered in the ministerial establishment of the High Court, and in the salaries of the Puisne Judges, and by the saving of fees to Pleaders employed to conduct the prosecutions in criminal trials on behalf of Government. A further saving, which will shortly be effected by the abolition of the office of the Director of Revenue Settlement, will more than cover the remainder of the charge. Moreover, for the next two or three years, the expenditure must of necessity be considerably below the sum proposed, as in the present state of the Civil Service some time must elapse before all the appointments can be filled up.

| | Rs. |
|---|---|
| Annual cost of ministerial establishment of the High Court, as it stood on the 31st ultimo ... ... ... ... ... | ... 2,22,711 |
| Do. do. as now fixed ... ... | ... 2,02,397 |
| Saving | ... 20,314 |
| *Deduct*— | |
| Probable loss of fees consequent on the officers on the original side of the Court being paid by salaries ... ... ... | ... 5,000 |
| Net Saving ... | ... 15,314 |
| Eventual saving by reduction of salaries of 4 Puisne Judges of the High Court, in the case of one from Rs. 50,000, and in the case of three from Rs. 49,000, to Rs. 45,000 ... ... ... ... | ... 17,000 |
| Estimate of fees payable for public prosecutions ... ... ... ... ... | ... 20,000 |
| Salary and office establishment of the Director of Revenue Settlement... ... | ... 67,370 |
| Total | ... 1,19,684 |

# JUDICIAL DEPARTMENT.

| Year. | Revenue. | | Charges. | | Total. | | Net. | |
|---|---|---|---|---|---|---|---|---|
| | Ordinary. | Extra-ordinary. | Ordinary. | Extra-ordinary. | Revenue. | Charges. | Surplus. | Deficit. |
| | | | | | | | | |

| Extract from Department Government of India. | | Office to which the proposition refers. | Nature of Charge. | | | Proposition. | | | | | | Casual or Extraordinary. | Grounds of Proposition. | Local Government's recommendation. | Orders of the Government of India. | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Present Scale. | | | Proposed Scale. | | | Permanent. | | | Temporary. | | | | | |
| | | | | | | | | | Increase per month. | | Decrease per month. | Increase per month. | | Decrease per month. | | | |
| No. | Date. | | | | | | | | Rs. A. P. | | Rs. A. P. | Period. | Rs. A. P. | Period. | Rs. A. P. | | Department. Remarks. | Financial Department. Remarks. | Financial Department. Orders. |
| | | Zillah Courts in the Madras Presidency | None. | Rs. | A. P. | 10 Registrars of Zillah Courts at Rs. 800 each .. | Rs. | A. P. | 8,000 | 0 0 | | | | | | Casual. | *Vide* letter to the Secretary to the Government of India, in the Home Department, dated 10th June 1863, No. 905. | Favorable. | | | |
| | | | | | | 1 Law Lecturer .. | 8,000 | 0 0 | 300 | 0 0 | | | | | | | | | | | |
| | | | | | | Rupees .. | 300 | 0 0 | 8,300 | 0 0 | | | | | | | | | | | |
| | | | | | | | 8,300 | 0 0 | | | | | | | | | | | | | |

FORT ST. GEORGE,
*The 10th June* 1863.

A. J. ARBUTHNOT,
*Chief Secy. to the Govt. of Fort St. George.*

*From Captain* W. N. LEES, LL. D., *Secretary to the Board of Examiners, to the Secretary to the Government of India, Home Department,—No.* 370, *dated 30th July*, 1863.

I am directed by the Board of Examiners to acknowledge the receipt of Mr. Wyllie's letter dated the 18th of March last, transmitting minutes and other papers, and desiring to be furnished with the opinion of the Board in detail on the measures discussed therein, for the training, especially in legal knowledge, of young Covenanted Civilians.

2. The subject of the reference was—

1*st.*—The Hon'ble Mr. Maine's proposal to employ one or more of the young Civilians studying in Calcutta in the higher work of the Legislative office.

2*nd.*—The measures which have been adopted by the Government of Bombay for the training in legal knowledge of young Covenanted Civilians; and,

3. As according to the existing rules, young Civilians have the privilege of reading for Honors in the Native languages during the 18 months they are allowed, under certain circumstances, to remain at Calcutta, it became necessary to include the consideration of the point.

4. It will be seen from the accompanying copy of the minutes of the members of the Board that they have given great attention to the important subject of the reference; but, although the papers recorded by them are full of useful observations and suggestions, they branch out into such a variety of considerations, that it would be difficult to make a satisfactory digest of them, and they are, therefore, sent *in extenso*, in the belief that they will be of more real value in that form.

5. I am, however, directed to request particular attention to the last paragraph of the minute of the Secretary to the Board at page 203, the course suggested in which has been adopted by the President in his concluding minute.

6. The original documents received with the letter under acknowledgment are herewith returned.

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MINUTES BY THE BOARD OF EXAMINERS ON THE REFERENCE FROM THE GOVERNMENT OF INDIA, DATED THE 18TH MARCH, 1863.

*Minute by the* HON'BLE SIR C. E. TREVELYAN, K. C. B., *President of the Board of Examiners,—dated 29th April* 1863.

The first point we have before us is the Hon'ble Mr. Maine's proposal to employ one or more of the young Civilians studying in Calcutta in the higher work of the Legislative office.

Then we are asked to give our opinions upon measures which have been adopted by the Government of Bombay for the training, especially in legal knowledge, of young Covenanted Civilians.

And, lastly, as this stage of a young Civilian's career is the only one in which he can read for Honors in the Native languages, this point must not be excluded from consideration.

It will be seen from the minutes of Council that I have already expressed an opinion on the Bombay proposal. If more legal studies are wanted, they ought to be pursued in England. The time of a young Civilian *in this country* is too precious to be expended in law lectures. It is already too short for the indispensable objects of learning the languages and obtaining a practical acquaintance with the manner in which business, including legal business, is done in this country.

Two or three young men selected from time to time from among those who have done best in law at home would derive great advantage from a few months' work in Mr. Maine's office. Under his able direction they would both contribute to the efficiency of the office, and would qualify themselves for more valuable service afterwards. But if this principle is good for the Legislative Office, it is equally so for the Financial, Foreign, and for some branches of the Home Office. Care must only be taken that these highly cultivated young men at that critical period of life are withdrawn for a time from the ordinary routine of their service only to the extent to which they can be suitably employed.

The third point has deeper roots. It was long a well-understood part of our Anglo-Indian policy to encourage the acquisition of a superior knowledge of the Oriental languages by our civil and military officers. The money rewards given, liberal as they were, were the smallest part. A reputation for such knowledge was in itself at that time a considerable distinction. It was also one of the most ordinary avenues to high public employ. I myself remember many officers holding eminent situations in the diplomatic and other departments, who owed their rise to their reputation as linguists. Now all this is changed. Young civil and military officers still pass the ordinary compulsory tests; but there is hardly such a thing as reading for the higher honors. Oriental attainments are no longer held in the same esteem; and although the official machinery remains the same, the spirit which gave life to it has departed.

Have circumstances so changed as to make a change of policy in this respect proper? I think not. Orientalism may have had its extravagances in former days. What system has not? In endeavoring to establish the old Oriental literature as the standard of Native popular education, a great mistake was committed which largely contributed to bring the whole system into disrepute. But that, situated as we are in India, it is still an object of first-rate national importance, not only that all should acquire a practical knowledge of the Native languages, but that some should pursue the study far enough to become masters of Native literature and habits of thought, and to be the interpreters of them to their countrymen, cannot, I think, be doubted. I therefore assume that the old policy is to be in substance maintained, and that the impediments ought, as far as reason and expediency require, to be removed.

There are, then, according to my view, two objects, besides passing in the languages, upon which, under certain circumstances, our young Civilians may with advantage occupy themselves at Calcutta. That is,

1*st*, assisting in the Legislative and the other Government Offices; and 2*nd*, studying for Honors in the Native languages.

The next question is, under what conditions these desiderata may be attained without too much interfering with other requirements?

1*st*.—No Civil Servant should be admitted to the privilege of remaining for a further period at Calcutta for either or both of these purposes *until he has passed in the languages*. Sir J. Peter Grant's* letter, a copy of which is annexed, is quite decisive on this point.

2*nd*.—Admission to this privilege should depend *upon the manner in which the pass-examinations are got through*. Each step in advance in a young man's career should be connected with that which immediately precedes, and should furnish an additional motive to exertion. Every Civil Servant who passes the test of qualification in two languages, at or before the fifth general monthly examination after his arrival, receives a donation of Rs. 800. This should also entitle him to the *privilege* of remaining at Calcutta for a further period for the objects stated. How far it may be necessary or desirable to extend this qualification I am not prepared to say—but so far, I think, I clearly see my way, that the privilege should depend entirely *upon the time within which the test examination is passed*, and not upon the display of superior proficiency in one or more languages within wider limits of time.

3*rd*.—The period for remaining at Calcutta should be subject to an absolute limit. There is no principle of Indian administration more important, than that every Civil Servant should learn his profession during the early period of his career in actual contact with the Natives in the interior. It would be a great public misfortune if our proposed improvements only resulted in creating a new class of Calcutta-bred Civilians. Eighteen months from the date of arrival (the period at present allowed for studying for Honors), is the longest time that ought to be allowed.

I now come to the real difficulty of the case.

Of late years other examinations have been instituted in the Mofussil, of a more practical and professional kind; and as promotion and increase of pay depend upon passing in them, the pursuit of Honors at Calcutta has, with rare exceptions, given place to the attainment of ends having a more direct bearing upon the prospects in life of the young men.

As regards pay, the difficulty may easily be got over. The young men can receive the same pay at Calcutta as they would receive if they were acting as Assistants in the Mofussil, and when they obtain Honors or complete their employment in a Calcutta office in a satisfactory manner, they might, if necessary, receive a further increase of pay.

As regards promotion, the best suggestion I have to offer is, that provided the young men satisfactorily accomplish the objects for which

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Lieutenant-Governor of Bengal

they were permitted to remain in Calcutta, *they should take rank for promotion from the date of their being so permitted to remain, but with the understanding that they cannot actually obtain promotion until they have passed the Mofussil examinations qualifying them for it.* There may be objections to this compromise of which I am not aware. I suggest it as the best solution which occurs to me, relying upon my more experienced colleagues to give shape and effect to it, if it is in substance right.

I must crave indulgence for the somewhat didactic style of this memorandum. The different parts of the subject were so interlaced that it was difficult to avoid abruptness in presenting the points for decision.

Captain Lees' "Guide to the Calcutta Examinations" and the rules for the Assistants' examinations are circulated with the papers.

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*From* E. H. LUSHINGTON, Esq., *Offg. Secretary to the Government of Bengal, with the Lieutenant-Governor, on tour, to the Secretary to the Government of India, Home Department,—No.* 346, *dated* 10*th March*, 1860.

I am directed to acknowledge the receipt of Mr. Under Secretary Chapman's letter No. 47, dated the 6th January last, forwarding a correspondence between the Government of Bombay and the Secretary of State, relative to an experimental measure which has been authorized for the employment of young Civilians in the Bombay Presidency, on official duties of minor importance, immediately on their passing an examination in one language.

2. The Hon'ble the President in Council is of opinion that, unless good cause can be shown to the contrary, the new rule should be introduced generally, and the Lieutenant-Governor is called upon to state his views on the subject.

3. In reply, I am desired to state that the Lieutenant-Governor does not anticipate any advantage from the adoption in Bengal of the Bombay plan; but on the contrary he thinks it would seriously retard the time of absolute qualification for the public service, which it is a great object to accelerate.

4. If a young Civilian, as soon as he has passed in one language, for example, in Bengallee, is employed in minor and miscellaneous work in a district where only the language he has not learnt is spoken, for example, in Behar, and if this is a good system, it seems to the Lieutenant-Governor an inconsistent course to insist upon his passing even in one language, before employing him in the manner described. His knowledge of Bengallee in no degree makes him competent to do business in Behar; why, therefore, should his passing previously in Bengallee be insisted upon? If it is a good plan, in order to acquire a knowledge of Oordoo, to go to an Oordoo Province, there to be employed in some sort of minor and miscellaneous business, before knowing so much as the alphabet of Oordoo in any character, then the

young Civilian has cause of complaint that this plan was not adopted in his case for Bengalee as well as for Oordoo. The Lieutenant-Governor, however, does not think it a good plan. At the time of life at which Civilians come out to India, he believes that the first step towards learning a new language is best made through the grammar, and by means of a very short course of reading and written exercises. Until a little time has been bestowed upon these studies, the occupation of the student's hours in any sort of business, can but operate to delay the time of his acquiring a knowledge of the language.

5. In this Presidency at least this delay would be compensated by no advantage obtainable by the use of the Assistant's services in office. The case is perhaps different in other Presidencies; but here, where the several vernaculars are marked by strong and decided geographical lines, the services of an Assistant who does not know a word of the vernacular of the Province he is in, are quite valueless.

6. If, on the other hand, the young Civilian is posted to the Province, in the language of which he has passed, he will be useful in that Province, and his whole time may be usefully employed there. But as only a certain number of hours can be employed in the day, for every day and every portion of a day that the young Civilian is employed in office work, his passing in his second language is postponed by a day or a portion of a day; as his time does not count towards his rising in the service till he has qualified in both languages, injustice, as it seems to the Lieutenant-Governor, would be done to him individually by such premature employment. And as a Civilian in these Provinces must know both languages to be an available and a really useful servant, the public service would suffer equally.

7. The Lieutenant-Governor does not believe that on this side of India, time is now wasted by young Civilians in idleness, which, under the proposed system, would be, or might be, employed in petty official routine. The view of the Lieutenant-Governor in this respect would appear to be established by a statement submitted to him by the Secretary to the Board of Examiners, showing, that the general average of the time occupied by young Civilians attached to the College, who have entered the Service on the competitive system, in passing in two languages, is only eight months and a few days. These young men, with perhaps one or two exceptions, had most probably never seen any book of Oriental literature, or learnt a single word of either language, before their arrival in this country; and it is almost impossible that they could have attained this degree of proficiency in so short a period, and yet have found any time to devote to anything except study, beyond the hours of necessary relaxation.

8. In the Lieutenant-Governor's opinion, the principle of uniformity of rule is only a sound principle when the circumstances are every where the same; and when, moreover, it is beyond question or doubt that the rule is, under these circumstances, the best of all possible rules. The Bombay Government state, that in that Presidency an Assistant, meaning doubtless a young Civilian just arrived, is of no use

for two years ; whereas under the system now proposed, which is the old system in Bombay, he might become useful in six or eight months. That may be a good reason for a new plan at Bombay, but it can be no reason for a new plan elsewhere, unless it be shown that the statement of fact, as regards Bombay, is true as regards all other places. The Lieutenant-Governor has shown that this is not the case as regards the Lower Provinces of the Bengal Presidency; for here the young Civilian passes in *both* languages, and so becomes wholly, instead of only half, useful, in about eight months This the Lieutenant-Governor considers to be well, and he respectfully asks the Government of India, so far as these Provinces are concerned, to let well alone.

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*Minute by* W. J. ALLEN, ESQ., C. S., *Member of the Board of Revenue, Lower Provinces,—dated 5th May*, 1863.

I concur generally in the views expressed in the minute of the Hon'ble the President of the Board.

It appears to me that nothing ought to be done to impede the progress of young Civilians who are studying the Native languages in Calcutta, with the view of qualifying themselves for the public service; their attention ought not to be called off to other matters, however important, whilst they are studying to pass the test examinations.

It is very desirable that young Civilians should be detained in Calcutta for as short a period as possible ; they can gain there very little that is good, they may learn much that is the contrary. They will be in a much better position at a Mofussil station where they will have interesting official duties to attend to, and where their associates will at all events do them no harm.

After young Civilians have passed in both languages, it might, I think, be advantageous to employ a limited number of the most promising of them in the Legislative, Foreign, Financial, and Home Departments. I would not make such employment compulsory, but it should be offered as a distinction and reward to those young men, who had most distinguished themselves at the examinations in England and in Calcutta.

I agree with the Hon'ble the President that these young men ought not to be detained for this purpose in Calcutta for a longer period than 18 months, counting from the date of their arrival.

Sir J. P. Grant has, I think, satisfactorily shown that the Bombay plan is perfectly inapplicable to this Presidency, and that its introduction here would be attended with positive disadvantages. The Bombay Small Cause Court must be something very different from the Calcutta Small Cause Court, if young Civilians can derive any benefit from attendance there! If it were desired to prejudice the minds of young Civilians against the Natives of India, a few visits to the Calcutta Small Cause Court might effectually answer the purpose It is just as well that the young Civilian should not go into the Mofussil with the

idea that he has seen in the Calcutta Small Cause Court a fair specimen of Indian courts of justice, or of the persons who frequent them.

After a young man has passed the test examinations, and whilst he is reading for Honors, he might, I think, very well attend in one of the Public Offices for a certain portion of every day; if too much be not exacted from him there, his attendance would be a relaxation rather than otherwise.

The pay and promotion of young Civilians detained for service in the Presidency Public Offices, can be regulated as proposed by the President.

What the Hon'ble the President of the Board has observed regarding the decline of Oriental learning in the Indian Civil and Military Services, is a matter of much importance. It is, I fear, but too true that the race of great Orientalists, of men whose Oriental acquirements were regarded with respect and delight by the upper classes of Native society, is now almost extinct. The Government of late years has ceased to give substantial encouragement to Oriental learning, but to this is not to be ascribed altogether the neglect of the higher branches of Oriental literature by the services; official men are now much more English in their habits than they formerly were, and their intercourse with Natives has in consequence become more formal and restricted than it used to be. The events of 1857 have, I fear, tended to widen the distance between European functionaries and their Native neighbours,—a result much to be deplored, and one which is calculated, I think, to impair and weaken, in no small degree, the political and social influence of our Government in this country.

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*Minute by* E. T. TREVOR, ESQ., C. S., *Officiating Member of the Board of Revenue, Lower Provinces,—dated 7th May*, 1863.

I am opposed to any scheme which would keep young Civilians in Calcutta an hour longer than was absolutely necessary. They would obtain much more useful knowledge in a Collector and Magistrate's office under proper supervision, than either in attending any Department in Calcutta, or in having to undergo a course of law lectures, or in having to attend the Small Cause Court.

It is a matter of satisfaction to me to find that the views I entertain regarding the College examinations, appear to be those of such a high authority as the Hon'ble Mr. Harington. What practical good can young men gather from the study of a language like Oordoo, which Captain Lees says has no prose works, but fairy tales, or of a language like Hindee, which has neither poetry nor prose? I find that in Lord Metcalfe's time there was a proposition to abolish the College of Fort William. I do not find what opinion he held regarding this proposition; probably he opposed it, but still he drew up rules for the junior Civil Servants after the abolition of the College of Fort William, which very much resemble those which Mr. Harington would enforce. The young men were at once to be sent to stations in the Provinces; they were not to be appointed to any office until they became

qualified to enter into its duties. They were to be examined every two months by the civil functionaries of their respective stations, and the state of their proficiency reported. During the probation they were to have such employment given them by the functionaries under whose control they were placed, as might aid in qualifying them for the public service. The examinations to which the young Civilians were to be subjected, were to be conducted with a view to ascertain their qualification for public service by a competent knowledge of the written and colloquial languages chiefly used in public business in the Provinces in which they were to be stationed. A knowledge of the grammar of these languages was to be considered requisite, beyond which a facility of conversing with the Natives of the country, and of reading, comprehending, and translating business papers, would be considered the proper test. During the time of probation, the salary was to be Rs. 300 a month. After qualification, the salary was to be that of the office to which the young Civilian was to be appointed.

I think there can be little doubt that the knowledge mentioned above, is what we desire for our young public functionaries, and such knowledge in my opinion is better attained in an office in the Mofussil, than in qualifying for the public service in the College of Fort William, in the present tests or in any of the like nature.

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*Minute by* C. Hobhouse, Esq., c. s., *Superintendent and Remembrancer of Legal Affairs,—dated 12th May*, 1863.

I gather from the papers now submitted to us that we are continuing the subject of the training of young Covenanted Civilians from the time of their first coming in Calcutta. We have given our opinions on the question of the languages they are to be required to pass in, and on that of the books, &c., that are to be the texts in those languages. We are now called upon to say what we think on the question of studying for Honors, and on that of a special legal training.

I am clearly of opinion that Civilians should, on every account, be encouraged to study for Honors, and that the time for such study is whilst they are in Calcutta, and before they are engaged in active service. If the sole object of the vernacular examinations in Calcutta was simply to fit a man for so much office work, I should be inclined to say that the better, because the surer and shorter plan, was to get rid of the examinations altogether, and to send a man at once into Mofussil, there to learn the languages by actual contact with them in an official form and in the mouths of the people speaking them ; but the above-mentioned is not, as I understand it, the sole object of the examinations ; there are other and higher objects, such as those mentioned by the Hon'ble the President, and such as those exemplified in the lives and writings of such men as Sir William Jones, Lord Metcalfe, Sir Henry Elliott, and others, and it is for such objects that I consider that the studying for Honors should be encouraged.

And such studies can only, I think, be advantageously, successfully, or, indeed, at all carried on whilst Civilians are in Calcutta, for there alone

will they be able to obtain good teachers and competent examiners, and there alone will they have sufficient leisure. In the Mofussil the desire in themselves to qualify the sooner for the public service generally, and for more responsible, active employment, and the little encouragement to study which, to a certainty, they will meet with from officials, all in active work around them, will very soon take away all inclination to read for bare Honors.

The studying, then, for Honors, must be carried on in Calcutta, and the next question is, how to reconcile such studies with the rules for Assistants' examinations in the Mofussil. The difficulty of this reconcilement will be best understood by a supposititious case. Two men equally talented come out to Calcutta together. Both of them pass the examinations in both languages within the sixth month after their arrival. One goes at once into the Mofussil, the other remains in Calcutta, say for six months, to read for Honors. At the end of these six months he, too, goes into the Mofussil, and there, under Rule III for the examination of Assistants, he may find his friend already in active employ, and thus to have obtained a start of him, which being of equal ability, he may be expected to retain all through his service.

How is this to be remedied? I confess I see no remedy, except that of making it compulsory on all Civilians to remain at least one year in Calcutta after their arrival in the country, and I see no hardship and many advantages in this, or rather no hardship that is not compensated for by many advantages. The hardship is, I apprehend, the expense of living; but I am inclined to believe that this expense is in an unmarried man, not at all, and in a married man not much greater than it is in the Mofussil, and though boarding-houses in Calcutta are not comfortable, I hardly think that any Civilian coming out to India married, can in prudence have looked forward to much comfort in the way of living for some years.

And the being in Calcutta presents many advantages to a young Civilian. It gives him the opportunity of knowing and being known to able men at the head of their professions, not only in his own service, but in the mercantile and legal professions, in the Councils, and amongst the Natives. It introduces him to the best, because the largest, the most varied, and best collected society in India. It sends him eventually into the Mofussil, either not unknown personally to, or at least with introductions to the residents there, and finally it affords him the opportunity, which in agreement with Mr. Maine and others I would give to him, for a better legal training. It is answered that most of these advantages are already within the grasp of young Civilians, and that they do not as a body avail themselves of them. This is true, but it arises, I believe, mainly from defects in what is called the competitive system, which there is reason to hope will be remedied, and this is a reason the more why, officially, we should encourage Civilians to avail themselves of these advantages, and it is at least unanswerable that it is better for Civilians to have them, than not to have them within their grasp.

Then as to the question of special legal training. No one doubts that such training is necessary for Civilians, and most people will admit that somewhat more of it would be a benefit; but this at least is a fact that, in the pass-examinations in England, provision is made for it. Much, perhaps, of the legal knowledge obtained in England has taken no deep root, but in some cases Mr. Maine assures us that accurate and useful knowledge has been acquired; but whatever may be the amount of knowledge acquired, it will readily be admitted that such knowledge will best be confirmed and utilized by speedy practical application of it.

Under the present system a Civilian obtains a certain amount of theoretical knowledge of law, in order to enable him to pass the test examination in England. This examination passed; his knowledge, for any thing the training system does for him, lies fallow till he gets into active employment, and it is not until some time even after that, that the higher part of it is brought to bear practically. When that time comes, how much of this knowledge can reasonably be expected to have survived?

But if, instead of allowing a young man to forget whatever he may have learnt of legal principles, you place him, without any considerable interval of time, in positions where he will have the means of testing, confirming, and applying his knowledge of those principles, and this with direct reference to the laws and customs of the country he is to assist in governing, you seem to me to be doing the very thing you are bound to do, *viz.*, supplementing his previous training.

The two subjects on which it seems to be admitted that there should be, and on which, theoretically, there now is, a special training for Indian Civilians, are law and the vernacular languages; in both subjects is special knowledge equally requisite: yet how are they treated? In law you stop your training from the time a Civilian leaves England, and do not require for a year or two at least, and even then not in its higher branches. For the vernaculars you very rightly continue your training without any interval at all. But when knowledge in both subjects is equally essential, why make any difference between them?

It cannot be because there are not the means in Calcutta of continuing the legal training on a sound basis, for I think it is impossible to doubt but that in the courts, in the Legislative office, the Legal Remembrancer's office, and in the Board of Revenue, and perhaps also in special law lectures, there exist the means of so continuing this legal training.

In the courts and in the Remembrancer's office will be found the application of the laws and civil and criminal procedures; in the Legislative office will be found the sources, the history, the scope, and objects of the laws; and in the Board of Revenue will be found the whole revenue system, legislative and executive.

It is not necessary now to go into any detail as to the terms on which Civilians are to be directed to continue their legal training in

the offices in question; that seems to me to be a matter which can be arranged hereafter, but I would not sanction any arrangement which went to keep young men in too strict a state of pupilage, and would treat with them 'on Honor,' as Arnold treated with the Sixth Form at Rugby, and would give them all reasonable leisure from business, and time for social amusements.

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*Minute by* H. L. DAMPIER, Esq., C. S., *Secretary to the Board of Revenue, Lower Provinces,—dated 13th May*, 1863.

I am clearly of opinion that the young Civilian should remain in Calcutta until he has acquired such a grammatical knowledge of the selected vernacular languages as shall enable him to pass the required test examination, because Calcutta affords the greatest facilities for acquiring such knowledge, and because it is desirable that every young man should have an opportunity of knowing and being known to Calcutta men in different positions.

The latter object would be promoted by a measure which would also go far to obviate the evils of a compulsory residence in Calcutta on means which, to married men at least, are inadequate to the position which the young Civilian should occupy. The natural consequence is, as pointed out in Mr. Harington's note of May 1862, to throw many young men among associates from whom it is not desirable that they should derive their first impressions of India or of their future duties. I should be glad to see the Government make arrangements for placing at the disposal of young Civilians on their first arrival, quarters such as are supplied to Military men. This would throw the young Civilians together, and would, I think, bring them more among those, acquaintance with whom is generally accepted to be one of the advantages to be derived from residence in Calcutta.

Any question of expense would be out of place here; but in anticipation of another objection which will be raised, I may remark that the young Civilians of 1863 are older men, and probably, as a general rule, more steadied by circumstances than the inmates of Writers' Buildings 40 years ago.

I think that the undivided attention of the young men should be given to the vernaculars, until they have passed the test examinations. The object should be to send out to the districts as quickly as possible every young man who has no further object in Calcutta than to pass his tests. But the candidate for vernacular Honors must continue his studies with Calcutta advantages, and in electing to do so, he deliberately gives up the more tangible benefits of passing his Mofussil examinations, and obtaining his first promotion early, for the prospective advantages to be derived from higher linguistic acquirements.

The question, I think, is, whether any measure can be devised by which the time thus given up by a young man can be made profitable for his improvement in other subjects than the vernaculars. So much relief is gained by a change of the subject on which the mind is fixed,

that I believe a student could to some extent be profitably employed in other matters, without detriment to his vernacular studies; but I would make it a point that the latter should be paramount.

The spare time might profitably be employed in obtaining an insight into one or more of the Presidency offices, as proposed by Mr. Maine, but I would attach young men not only to the Government Secretariat offices but to departmental offices also. I am inclined to think that the more nearly the office is connected with his early district duties, the more useful this part of his training will be.

But precautions should be taken to prevent the tax on their time at these offices from being so great as to interfere with vernacular studies. It is obvious that the temptations on both sides will be great, if the student's services in the office are found useful, and if, on the other hand, there is the slightest reason to hope that increased usefulness in the office (at the expense of time which should be devoted to vernaculars) may have the effect of securing to the student an Under-Secretariship. Much advantage might also be gained from attendance at a short course of special law lectures directed to their future duties.

I believe that one really effectual measure could be adopted for making young men known and appreciated in Calcutta according to their relative merits, and for giving them an insight into the higher branches of administration at a time when such an opportunity would be valued by them, and would be most beneficial to them as extending their view beyond the narrow limits by which it is confined in the Mofussil. According to the present system, it may happen that after a young man has been two or three years in the Mofussil, he obtains the great object of most Assistants' aspirations,—a Calcutta appointment as Under-Secretary! Then two courses are before him, either he rises for years from one Calcutta appointment to another and becomes the "Calcutta-bred" Civilian, to whom the President refers; if so, by the time he reaches high office, Government has the benefit perhaps of brilliant talents and sound judgment, but without the local experience and knowledge of detail which would have been so valuable an adjunct to them. If this be not the Under-Secretary's career, he probably remains four or five years in one or two Presidency appointments, and then returns to be head of a Mofussil District, his Mofussil experience consisting of two years of elementary work, since which an interval of five or six years has elapsed. In such a case, his position is fair neither to himself nor to his district. I would ask those who have the responsibility of making appointments, whether a Presidency appointment is not occasionally given to a man *because* he has been so long at the Presidency as to render him of doubtful fitness for the post that men of his standing are filling in the Mofussil. This is evidently to remove a prize which should act as a great stimulus to Mofussil men.

The remedy seems to me to lie in making the junior Secretariat appointment temporary, say for 18 months, or two years, and making imperative the Officer's return to the Mofussil on vacating it. The

rule should be absolute that eight years out of the first ten in a Civilian's Indian career must be spent in the Mofussil. Every young man who was at all likely to do well in such an appointment would thus have an opportunity of making himself known, of passing in review as it were; and I believe the spirit infused into the Mofussil by such an arrangement would be productive of great good; the feeling would be got over which pervades Mofussil men (perhaps without good grounds), that the young man who has once got into a Calcutta appointment has permanently outstripped his contemporaries, whom he leaves in the Mofussil. I may perhaps be allowed to take this opportunity of drawing our President's attention to a portion of the Bombay scheme, which I think would supply a desideratum in Bengal. Although it does not relate to the earliest training of young Civilians in India, and is, therefore, beyond the duties of a Board of Examiners, the Hon'ble President might think it worthy of his notice in another place. I mean the gradual training of men in the judicial line before they are made Judges of Districts. I have always regretted the abolition of the Assistant Judgeship, and it has always seemed monstrous to me to take a man from executive duties and to place him *per saltum* on a bench in which his duty is to supervise and correct the judicial proceedings of experienced Uncovenanted officers,—a line which more than any other depends on special training rather than general education.

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*Minute by* J. P. GRANT, ESQ., C. S., *Officiating Junior Secretary to the Board of Revenue, Lower Provinces,—dated 13th May*, 1863.

The Government of Bombay proposes to secure for young Civilians a competent knowledge of law by requiring them, while '*in statu pupillai*,' at the Presidency, to attend law lectures and the sittings of courts of justice.

The Hon'ble Mr. Maine proposes to arrive at the same end by attaching selected officers to the office of the Legislative Department of the Government of India.

That Government has called upon us to give our opinion on the two specific projects above mentioned, as well as on the general training in law of young Civilians.

My own opinion is, that until a young man shall have given a guarantee in the shape of a certificate of qualification in the languages, of his fitness to enter upon his public duties, *nothing* should be required of him but that certificate. Thus I do not approve of the Bombay plan to include law in the course of study for qualification for service; nor do I think that the course of law studies proposed in that plan will lead to the desired end.

With regard to Mr Maine's proposal what first strikes me as open to objection is its manifest partiality. Any course of elementary study, especially in the case of such an important subject as law, should be, I think, if not absolutely compulsory on all, at least freely open to all.

This Mr. Maine's proposal does not, and cannot, provide for, and the defect appears to me to be sufficient to condemn the scheme. But even if the scheme could be fairly worked, I think that it would provide even less than the Bombay scheme for the end in view. In saying this I do not, of course, wish to be understood as having the presumption to doubt the Hon'ble gentleman's capacity, which is undeniable as a Professor of jurisprudence. What I mean is, that I do not think that the kind of legislation which is now going on in India, and is likely to go on for some years, is calculated to advance a student of it in the knowledge of law. I admit that a young man who may have closely watched the passage through the legislature of such exhaustive codes as those of Indian criminal law, of civil and of criminal procedure, may have acquired a large and useful knowledge of principles; but legislation of this kind happens only once in a century, and does not justify the formation of a permanent class for the study of it. I have no doubt that a course such as that here proposed would be most useful in engendering habits of accuracy and of discrimination, but I do not think it would teach much law.

As Mr. Maine states from experience that the theoretical knowledge of law possessed by young Civilians on their arrival in this country, is considerable, I cannot think of a better school wherein to complement that knowledge than a Collector-Magistrate's office in the Mofussil, to which each young Civilian is ordinarily attached on being reported qualified for duty. The duties of these offices demand the exercise of judicial powers, both in civil and in criminal cases, and of very large and miscellaneous executive powers. Indeed, so impressed am I with the importance of the early acquisition of Mofussil experience, that I would gladly see the adoption of a rule analogous to that rule in the Military Service which incapacitates an officer for Staff employ, even if otherwise qualified, until he has served two years with his Regiment. In the Civil Service the term might well be extended to five years.

It may be gathered, from what I have said above, that I am not in favor of the extension of the principle of Mr. Maine's proposal to the other departments of Government.

We have been asked, in connection with this subject, to give our opinions on the question of the general training of young Civil Servants. This is a most important question, and one on which I have long had a very decided opinion.

I think that there are strong grounds for regret at the very sweeping change which has taken place in the system of supplying the Civil Service of India. The old system has probably produced as great men, as many great men, and as high an average of men, as any system that can be devised, and although there were decided faults in that system, the remedies were easy and simple. A higher standard of entrance-examination to Haileybury College, equal to, and conducted in like manner to the present competitive examinations, would have prevented the (before) too easy admission of inferior men; and above

all, the entrusting the conduct of the four standard examinations of the Haileybury course to public examiners unconnected with the College, would have done away with the radical vice of the system which gave to the College Staff of Professors, men who were from their position naturally and unavoidably biassed in the conduct of these examinations. There was nothing to improve in the Haileybury curriculum of study, and this, combined with that of the late College of Fort William and its sisters of Madras and Bombay (the abolition of which I still regard with regret), presented a scheme of professional education which it would be impossible to improve.

But these regrets are useless now, and it only remains for me to state how I think the present system can be improved.

I am not very well acquainted with the details of the system, but I understand that selected candidates are required at the expiration of a year to pass a further examination in English, Hindoo, and Mahomedan law; in Oriental history, geography, and literature; and that they are also required to attend a course of law lectures and of sittings in a court of justice. This is surely too much to be accomplished in one year. I would at once cut down the list to two subjects, *viz.*, English law and Oriental literature. I do not think that a student would reap any palpable benefit from these few months' study of Oriental law, while I am quite sure that the whole year, even if exclusively devoted to the study of English law, would not be a day too long for the thorough grounding in principles which is absolutely necessary to enable the student further to pursue the study of Indian and of Anglo-Indian law. As I would confine the attention of the student, immediately after his arrival in India, to the study of Oriental languages only, so I would confine it, during the probationary year in England, as much as possible to the study of English law. I would leave, as they are, the rules which now prescribe the course of law studies, and the choice of languages.

I know so little of the constitution of the several Law Societies of London, that I cannot say how far the following idea, which I have long entertained, may be impracticable or even absurd; but I have long thought that if one such Society would receive the selected candidates as students, would provide for their instruction in law on the above plan, and would finally relax, in favor of those *who may be otherwise qualified*, the rules which I believe require a period of residence exceeding one year as a minimum qualifying for a call to the bar, that Society would be neither the sole gainer nor the least gainer by the concession. Besides many obvious advantages to the students, this plan would afford one perhaps not so obvious, but which I regard as not the least important, *viz.*, the bringing together and into each other's society the students of each year, and thus creating a bond of fellowship and an *esprit de corps* among them, the want of which is a serious drawback of the present system.

I come now to consider that part of the question which relates to the training *in India* of young Civil Servants.

Here I do not think that alteration is so much (if indeed it is at all) required in the different courses of study as in the rules which govern the sequence of those courses, and especially in the machinery which works them.

These courses are three, two of them compulsory, and the other optional. The first course, a compulsory one, requires that each young man shall attain a certain standard in two languages before he can proceed to either of the other two courses. Having attained this standard under certain conditions, it is optional with him to proceed to the second course of study, *i. e.*, that for Honors in the languages; but if he does not elect to do this, he *must* proceed to the third course, and is debarred for ever from returning to the second.

In practice the men have generally elected to pass over the second or optional course, because their promotion and position in the service in a great measure depend upon a quick passage through the third course, and thus the important advantages which this particular course of study was designed to bestow are lost. But the remedy appears to me to be patent and simple; there is not a single difficulty of the many which surround the scheme as at present constituted, which would not be utterly abolished by simply changing the order of sequence of the second and of the third course. Let no man read for Honors until he shall have passed *all* the service examinations. He will then, I believe, be more fit for a deep study of the languages than when he had only passed the first language-examination.

I have alluded above to the agency by which this system is administered. I am sure that there is not one Member of this Board who does not perceive and wonder at its very anomalous constitution. It grew out of the abolished College of Fort William on the occasion of the establishment of the (present) third course of examinations, and was so constituted as to admit a body of gentlemen who should especially administer these examinations. Its functions are (1), to examine all officers, civil and military, attached to the Presidency of Fort William in the present first and second courses of study; and (2), to examine the civil officers under the Bengal Government in the third course of study. Its constitution certainly befits its duties, for, as a rule, the Members who are chiefly concerned in the first-named duties (Members who held office in the abolished College), are appointed by the Government of India, and those concerned in the last duties, by the Government of Bengal. The practical result has been that each body has kept to the branch of work which most naturally fitted it, and there has been till lately to all intents and purposes two Boards, each having its own Secretary. Indeed, I know for a fact that some Members appointed by the Government of Bengal have been so misled by the manner of the working of these two sections of the Board as to fall into the error of considering that the section to which they belong was perfectly independent of that body to whom Captain Lees acts as Secretary, and to imagine that they had no position in the late discussion as to the test-languages of North-Western India.

However accurate may be the theory of this constitution of the Board, what I have said above, which is an undeniable fact, proves that it does not answer in practice. I would at once dissolve this union of incompatible things; I would restore to an Institution resembling the late College of Fort William, the functions of superintending the *literary* education of young Indian officers as it is comprised in the first and second courses of the present system; and to the several Divisional Committees who at present under this Board undertake the examinations of the third course, I would leave the sole administration of this portion of the system under the local Government. There would be no necessity for any intervening body between the local Committees and the Government, for there is no reason why the reports of these Committees should not be accepted as final, instead of being, as now, subject to modification by this Board.

If it is objected that this third course of study *also* comprises an examination, and a very severe one, in Native languages, I would answer the objection by saying that this part of the course is *not at all of a literary* character, as any one may see who will examine the printed scheme of this course which accompanies these papers.

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*Minute by* CAPTAIN W. N. LEES, LL. D., *Secretary to the Board of Examiners,— dated the 15th May*, 1863.

The three points for consideration, as set before us by the Hon'ble the President, are—Mr. Maine's proposal to employ junior Civil Servants in the higher work of the Legislative Council; the measures adopted by the Bombay Government for the legal training of Covenanted Civilians after their arrival in India; and the measures to be adopted for encouraging the young men to study for Honors.

It seems to be the opinion of the Hon'ble the President, and most of the other Members who have gone before me in minuting on this subject, that the whole and undivided attention of the young men should be devoted to the study of the Oriental languages until they acquire that competent knowledge of them which has hitherto been considered to qualify for the public service. I concur in that opinion; for, as things now exist in India, there are no means of supervising the studies of the young men; and, as Sir John Peter Grant has pointed out, the result would be that the time devoted to the study of other subjects would be taken from the study of the Oriental languages, and thus the qualification of the young men for the public service would be retarded.

For the rest, I might express my general concurrence in the excellent remarks of the Hon'ble the President, which appear to me to meet generally the requirements of the case. There are one or two points, however, on which I would wish to say a word. The young men, when qualified for the public service, should, I think, be released from pupilage. As regards their subsequent position, I would observe that, if it is of greater benefit to the country that they should pass their examinations by the first and second standards than that they should read for Honors,

they should not be permitted to read for Honors at all. Government, however, permits them to read for higher proficiency in the Oriental languages, and it has, of course, an object in view by so doing. That object, I opine, is its own, *i. e.*, the country's benefit, and not the benefit of the young men. If it is necessary that they should read for Honors, *all* young men should be compelled to do so. But they are not compelled to read for Honors, and I assume, then, it is not thought necessary that they should do so. It *is* thought necessary for young men to pass, and if they do not comply with the rule in this respect, they are removed from the Service. The case then stands thus: It is *necessary* for the young men to *pass*, and *desirable* that they should *read for Honors*. Now for Government to permit young men to read for Honors, and then to subject them to pains and penalties if they avail themselves of the privilege (granted, not for their benefit, but for the benefit of Government), appears to me not only illogical, but, in the absence of such political and other high preferment, as in former days followed eminent attainments in the Oriental languages, positively unjust.

With regard to promotion, I concur with the Hon'ble the President in thinking that it involves no real difficulty. A junior Civil Servant's time for promotion should commence to count from the day he is qualified for the public service. He should then be posted to the division of the Presidency to which he is attached, and his name placed on the list of civil officers of that division in regular order, and it should not be removed from the place in which it was put, except for the commission of some fault. I approve of the principle of a limit of time for all things. The time for passing in the languages is limited. Let, then, a limit of time also be fixed for passing the examinations by the first and second standards. Let it be fixed on a *liberal* scale, if it be counted from the date of qualification for the Service; and on a *fair* and *reasonable* scale, if it be counted from the expiration of eighteen months from date of arrival (which would be the most equitable plan), and let pains and penalties be attached to failure to pass within it, but not otherwise. I passed my drill as a Military officer in six weeks after I joined my Regiment, and had then to discharge all the duties appertaining to the position of a Subaltern officer; but I received no advantages of pay and promotion over other officers, who stood above me on the list, who did not pass their drill in less than six months. I did not feel aggrieved or oppressed, in the slightest, by being called on to discharge the full duties, and being invested with the full powers of a full Subaltern officer. On the contrary, I felt very proud of it, and if I gained neither pay nor promotion by my diligence and attention, I gained what was more valuable both to me and to the Government,—experience; and at the end of twelve months was a more efficient officer than those who had taken months to do what I had accomplished in weeks.

The principle of attaching higher pay to a higher charge, no doubt, is a very good one. The principle, again, of not allowing young men to obtain a higher charge, without having had a certain amount of experience of Mofussil work, is better still. But it appears to me that, as

pointed out by the Hon'ble the President, by fixing fair and reasonable limits of time without which only penalties shall be attached, the Military principle, as above explained, may be combined with both these principles, so as to admit of young men being employed in Public Offices in Calcutta, reading for Honors, and passing their examinations by both the first and second standards, within reasonable time, without any disadvantage to the public service.

I would call attention to a point, however, which often escapes notice in treating of these questions from an imperial point of view. I allude to the different circumstances of the Bengal Presidency, to those of Madras and Bombay. In the minor Presidencies there are no divisions. Here we have two—the Upper and the Lower Provinces. The Upper Provinces, again, are divided into sub-divisions, including the Regulation Provinces of the North-West and the Non-Regulation Provinces of Oudh and the Punjab. There are, besides, the Central Provinces to claim their share in our young men. Each of these divisions has its own Lieutenant-Governor or Chief Commissioner. The young men at Madras and Bombay are, from the time of landing, under the authority of the Government under which they will, as Assistants, be employed. Here, the young men are under the authority of the Government of India, until they are pronounced qualified for employment. The Governments, under whose orders they will eventually be employed, know nothing of them until they are placed at their disposal. It has been impossible, then, for the local Governments to give position for promotion to young men studying for Honors in Calcutta, of whose very existence they were unaware.

And in connection with this portion of the subject, I may notice the remarks of Mr. Grant, regarding the constitution of this Board. It is certainly very anomalous—indeed, I may say, ridiculous; for if it is desirable or necessary that the Central Committee for the examination of Assistants in the Bengal division of this Presidency should be affiliated or connected with that part of the Board which represents the old College of Fort William, it is certainly equally desirable or necessary that the Central Committees for the examination of Assistants in the North-Western Provinces, Oudh, the Punjab, and Central India, should be so affiliated also. But it does not appear to me to be at all necessary; for the two sections of the Board, since its establishment, have been so distinct that the Members of the Oriental Sub-Committee have not known even the names of their colleagues. The present arrangement was made by the Marquis of Dalhousie, under the impression that the rank and *status* of the Examiners and Secretary of the old College were not sufficiently high to inspire the young Civil Servants with a proper amount of respect for the dignity of the controlling authority; and that a Secretary, acting for a bench of Judges and a Board of Revenue, would instil their minds with more awe than a Secretary nominally invested with the authority of the Governor General as visitor. But the change was purely a change in name; for in reality the old College Examiners and the old Central Committee of Examination remained and remain each as they were before.

I object to the Bombay scheme altogether, on the principle that no father who had placed his son at Oxford, Cambridge, or Dublin, and could keep him there, would take him away to send him to Glasgow, Queen's College, Cork, or Elphinstone College, Bombay. If the time allowed at home is not long enough for acquiring a competent knowledge of law, the proper remedy is to prolong it, and not to send the young men out to India before they have mastered the principles of the subject, because it is thought they will learn languages better here. What knowledge of the languages is acquired in the Presidency towns, may be quite as well acquired in England, if proper machinery for teaching it be created; and at very much less cost to the Indian revenues. My idea, therefore, is that the best means of getting rid of *all* these difficult and troublesome questions which have been coming up periodically for the last half century to the annoyance of every one, and without any real practical good to the Government service, the young Civil Servants, or to any one else, is to transfer the education of the Civil Servants, in *languages* as well as in *law*, to England, and to admit no man into the Service until, as far as principles go, he has fitted himself for it. I do not see what the Indian Government has to do with student-servants on salaries of £400 a year, or an annual charge on the revenues of the State of £30,000. The efficiency of the Queen's Service in India is of course the first consideration, and if *that* is involved, the expenditure of £30,000 or ten times £30,000 is a matter of no consequence. Comparing the revenues of India with the importance of the duties Civil Servants are called on to perform, the expenditure of the larger sum, if necessary, or if it insured good or even better than present results, might be a profitable investment. But it appears to me that the expenditure of the smaller sum is not at all necessary, and therefore I would sweep it,—Board and all belonging to the system,—away.

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*Minute by the Right Reverend the Lord Bishop of Calcutta,—dated 27th May*, 1863.

There are very few points in connection with the papers now before us, on which my opinion ought to be considered of any value.

But I am confident, that enough is not done to encourage young Civilians to read for Honors. On the contrary, the present rules (as pointed out by Mr. Hobhouse) positively discourage them from doing so. There may be (as Mr. Allen says) other reasons besides this for the decay of Oriental learning in India, but here, at least, is one lying straight before us, which the Government, as it seems to me, might easily remedy. It would be absurd in me, who have no experience of Civilian life, to suggest how: but I will just remark that the present system of pecuniary rewards furnishes no encouragement whatever, since a man, by living in Calcutta, probably spends more in obtaining his Honor than he receives for obtaining it, besides finding himself, when it is obtained, behind his unhonored contemporaries in the race for promotion. Sir Charles Trevelyan's proposals appear practical and good.

And this duty of encouraging Eastern studies seems to me to suggest the only objection to Mr. Maine's proposal, otherwise most valuable, of teaching young Civilians something of the science of law and jurisprudence by employment in the Legislative Office. Even supposing that a man is only required to work in that office for three or four hours a day (which I understand is the case), I cannot agree with Mr. Allen that this work, especially in such a weather as is now dissolving all our mental and bodily faculties, "would be a relaxation rather than other-"wise" from Sanscrit or Persian. Surely, after four hours' hard mental work in office in the morning, a student might be forgiven if he wasted a great part of the afternoon in lying on his sofa with a novel. Probably the notion of relaxation would be better carried out if he were only obliged to attend at the Legislative Office on two or three days in the week, and were to have the other days undisturbed for his linguistic studies. And this, if two or three young Civilians were attached to the office, would, probably, be quite sufficient for the wants or even the convenience of the Legislative Department.

There are only two other points on which I will say a few words—

1.—Is it not a mistake to compel every candidate for Honors to read for them in a vernacular language? The object of learning the modern languages of India is to speak them, and a colloquial knowledge of Bengallee, for example, is much better attained in the Mofussil than in Calcutta. I know of a young Civilian who gained Honors, and who now complains that his reading for them is quite useless to him in Cutcherry. Why should not a man, as soon as he has passed his tests, devote himself at once to Arabic, Sanscrit, or Persain? These, I suppose, are the languages which we mean when we lament the fall of Oriental learning in our generation; and with regard to Persian, after our recent decision, it seems of double importance to facilitate and encourage its study.

2.—While I quite feel that a limit (such as 18 months) must be placed to a young man's stay in Calcutta, I agree with Mr. Hobhouse in thinking that a short residence there should by no means be discouraged. Calcutta has doubtless its temptations to extravagance, and other evil ways, but so have London, Oxford, and Cambridge: while it has, like them, the great advantages of society and vigorous intellectual life. A man who is banished to Mymensing, or to Jhung in the deserts of the Punjab, will surely be the better for remembering that these are not fair specimens of India, and for looking forward to something better and more genial than such desolation.

The result is, that I am in favor of encouraging reading for Honors in the Classical languages of the East, in every possible way; that I would add to such studies a moderate amount of (not daily) work in the Legislative and other offices, but especially in the Legislative, on account of the scientific character of the work which goes on there; and that I see no objection, except that of expense, to keeping men for a

year or 18 months in Calcutta. I should not be sorry to see the objection of expense diminished in some such way as is suggested by Mr. Dampier, and agree with him in thinking that the old evils of Writers Buildings are unlikely to occur now, and might be prevented if they were to threaten us.

*Minute by the* HON'BLE H. S. MAINE, *Member of the Council of the Governor General,—dated 14th June*, 1863.

Although I initiated this discussion, I am only responsible in reality for a camparatively small proposal. I merely proposed to take one or two young Civilians, and to employ them in the Legislative Office during two or three hours in each day. I suggested, indeed, that my project might involve the question of the more general employment of young Civilians in the Public Offices, but I did not feel that I had sufficient knowledge of the country or the Service to justify me in arguing that larger question, which I left to more experienced persons.

I do not understand that my colleagues or the Board of Examiners (with one exception) object specifically to my proposal when confined to its original limits. Even though they may be of opinion that all the time passed by young Civilians in Calcutta should, as a general rule, be devoted to languages, they would scarcely object to an exception being made in the case of one or two young men who have already given some proof of aptitude for law. It cannot be too often repeated that at present no Civilian has any training whatever in the preparation or manipulation of written law. Those senior members of the Service who, like my Hon'ble friend Mr. Harington, have attained to rare perfection in those arts, have acquired it through the accident which associated them from the very first with the consolidation and codification of Indian jurisprudence. Every Judge and every lawyer in England has gone through one or two years' attendance in the chambers of a conveyancer, and his work there, though less interesting and instructive than the preparation of Acts and Codes, was nevertheless essentially of the same nature as the work of the Legislative Office. But in India no opportunities for such study have hitherto been available; no Mofussil, no judicial experience will serve as a substitute for them; nor do I see any means of providing young Civilians with them during their year of probation at home. Yet there is nevertheless a certain demand in India, though not a large demand, for men so trained. Two or three Civilians, apart from the members of the executive Government, are periodically engaged in legislation; nor is there any reason why the Member of Council charged with the legislative business of Government, and the Secretaries of the Legislative Office, should not occasionally be Civilians. In fact the more widely this training could be extended, the better it would be for the Service; for to the want of such practice as a conveyancer's chambers supply, is no doubt attributable that extreme diffuseness which characterizes all legal and judicial documents in India.

The Bishop's suggestion, that the young men should be employed on alternate days and not for some hours of every day, is preferable, I think, to my original plan. I cannot, meantime, promise Mr. Allen that legislative work will be a relaxation from the study of Sanscrit or Persian, but if I am rightly informed, that there are now young Civilians in Calcutta reading ten hours a day during months for Honors in Bengallee, or, in other words, engaged all that time in the minute critical study of languages without any true literature, it strikes me that a day or two a week devoted to legislative work may save them from a state of mind closely akin to intellectual imbecility.

Mr. Grant objects to my proposal that it is "manifestly partial." I confess I do not see the force of the objection. Looking at the matter from the point of view of the Government, it is better that it should have two, three, or four public servants in each year qualified for legislation, than it should have none at all. Looking at it from the point of view of the young Civilians, even if the few who are placed in the Legislative Office should be arbitrarily selected, surely the remainder would have no good ground for grudging them the advantage, if advantage it be; it seems to me about as reasonable as that one Civilian should grudge another a superior knowledge of Hindoostanee derived from his being stationed in a district where a purer dialect is spoken. In fact, however, these gentlemen will not be arbitrarily selected, as I propose to take those who most distinguished themselves in the law examination at home.

As regards attendance at law lectures, I may be permitted to express my opinion, founded on considerable practical experience, that, unless the lectures are very carefully prepared, and by a very competent lecturer, listening to them is about as idle a waste of time as a young man can be condemned to.

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*Minute by* S. Wauchope, Esq., c. b., c. s., *Commissioner of Police,—dated 23rd June*, 1863.

It seems to me that but little remains to be said regarding the propositions mooted in these papers.

Mr. Maine has demonstrated most clearly that the attendance of young Civilians in the Legislative Office would prove of the highest advantage to themselves. He has also stated that the men listening to law lectures, as proposed by the Bombay Government, is an idle waste of time.

Sir J. P. Grant's letter seems to be decisive of the question as to when the young Civilian is to attend the Legislative Office, and gives unanswerable reasons for the necessity of his passing in the languages before being allowed to remain in Calcutta for other purposes. Neither do I think that any of those who are said to learn Bengallee and Hindoostanee for ten hours daily in the months of April and May, would be able, physically and morally, to attend, far less assist, at the Legislative Office.

The only question which remains to be considered is, whether it would be a privilege to all young Civilians or to the majority of them to stay in Calcutta, and consequently whether the best men would be secured without injury to themselves, present and in prospect. The circumstances of young Civilians are now very different from what they were in the times of Lord Wellesley. Such a thing as the advent of a married writer was then unknown and unheard of till the days of competition. I am told that a large number of the young Civilians of the present period arrive married, and they have consequently to provide not only for the subsistence of themselves, but for that of their wives, and perhaps children. My colleagues will, I am sure, concur with me when I say that the allowances paid to a Civilian on his arrival in the country are not more than sufficient to support him as a gentleman. A married man, to make ends meet, must live in almost penury, and seclude himself from the society of those, an acquaintance with whom constitutes almost the sole advantage to be derived from a residence in Calcutta. Will it, then, be any privilege for married men to remain in Calcutta? I should cartainly say not. For many reasons I would start every young Civilian into the Mofussil as soon as possible. He may gain much harm but very little good in Calcutta. I have known men who have resided in Calcutta for twenty years and who were as ignorant of the country, the natives, and their language, as if they had never left England. I would send every man, as soon as he has passed in the languages, into the Mofussil, and when picked men returned as Under-Secretaries and the like, then give them the privilege of attending the Legislative Office, the advantage of which they would be far better able to appreciate than when their brains are addled with humming Bengallee and Hindee.

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*Minute by the* REVEREND K. M. BANERJEE, *Professor, Bishop's College,—dated 26th June*, 1863.

So many points have been taken up in this discussion that I find some difficulty in methodizing what I have to say on them. I will take them up in the order in which the Hon'ble the President has presented them in his minute.

1. With reference to the Hon'ble Mr. Maine's proposal, I think it will confer an inestimable benefit on the Service, and therefore on the country, if it can be carried out *according to a system and with regard to ulterior measures.* It may initiate a "gradual training of men in "the judicial line" (to use Mr. Dampier's words), which would supply a great desideratum in India. The promotion of Collectors to Zillah benches without any special judicial training has always appeared to me to be a great defect in the administration of justice in the country. No liberal education, however high, no common sense, however sound, can compensate for the want of special training in an officer who, as District Judge, has to decide all cases in his Zillah, and has an appeal from Uncovenanted judicial officers of all grades, some of whom on *their* part had obtained their positions only after passing hard examinations

in law and jurisprudence. This anomaly, which Mr. Dampier characterizes (not too strongly I think) as "monstrous," may be obviated if Mr. Maine's proposal be adopted and followed out by other measures by which men may be found especially trained for zillah benches.

2. With reference to the measures adopted by the Government of Bombay about the attending of law lectures on the part of junior Civil Servants, I agree with Mr. Maine that unless those lectures were of a very superior character, and *especially designed for the Service,* our junior Civilians should not be subjected to such pupilage. I do not think they should be classed as fellow-pupils of the young men attending the Presidency College and similar Institutions. There ought certainly to be some special training for Judges—such as may at least guarantee to the public the amount of legal knowledge which is now tested in the Calcutta University law examinations; but this ought to be effected without mixing them up with Indian school lads. Mr. Maine's proposal forms the best basis.

3. The third point has reference to study for Honors. I would propose the repeal of some of the restrictive rules. I think a Civilian ought not to be restricted to a vernacular language in the first instance. After passing the two tests for service-qualification, he may be allowed the choice of his own language in the study for Honors. Nor should the twelve months' restriction be continued, if he cannot, or does not, take up more than one language for Honors. The 18 months' limitation, and the peril of being compelled to give up his attempts if the examiners do not report satisfactory progress, would be sufficient as restrictions. I would also have a new rule allowing a Civil Servant, even after employment. to come in for Honors after the manner of Military officers, at any time he likes, provided it be not later than five years after arrival in the case of a certificate of high proficiency, nor later than eight years in the case of a Degree of Honor. The rewards for Honors in the learned languages should be greater than those for the same in the vernaculars.

I think the junior Civil Servants should not be called out to any office while they are studying for the pass tests. After they have gone through those tests, and while studying for Honors, they may attend the Legislative Department very profitably. And as to the *after* examinations as Assistants, the difficulty may be overcome in the manner recommended by the Hon'ble the President.

Mr. Dampier's idea about quartering them under a common roof in Calcutta deserves much consideration. We need not now apprehend the evils which once existed about Writers' Buildings. The junior Civil Servants are, as a class, peculiarly distinguished by industry and application to study. This appears abundantly at the monthly examinations. Every encouragement and assistance ought to be given to their Oriental studies.

Much, however, must, after all, depend on the eventual recognition by the local Governments of the claims of those who distinguish

themselves by such studies. Oriental scholarship has perhaps been somewhat at a discount, in consequence of the re-action which was caused in the days of Lord William Bentinck by the attempts to sacrifice at its shrine the cause of true knowledge and science in public Colleges for the instruction of Native youth. But although it may be an injury to a Native to teach him the geography and astronomy of the Purannas instead of the geography and astronomy of Magellan and Copernicus, it is only a benefit to a Civil Servant, already accomplished in Occidental learning, to make him master of the language and tradition of the country he has come to assist in governing.

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*Minute by* F. B. PEACOCK, ESQ., C. S., *Registrar of the High Court,—dated 3rd July,* 1863.

I quite concur in the opinion expressed by the Hon'ble President on the scheme adopted by the Government of Bombay for the training of young Civilians in legal knowledge, *viz.*, that "if more legal studies are "wanted, they ought to be pursued in England." Not only, as Sir Charles Trevelyan remarks, is "the time of a young Civilian in this country too "precious to be expended in law lectures," but even if it were not so, the difficulties in the way of adopting that portion of the scheme, as pointed out by Mr. Maine, appear so great, that I am opposed to the experiment being tried. The attendance at the High Court and reporting cases would, no doubt, to a certain extent, be useful to young Civilians, but I cannot help thinking that the time so employed would be more advantageously spent in extending their studies in law in England for the following reasons: Take for example the case of a young Civilian in Calcutta. He attends the High Court in either its original or appellate side. If the former, he probably hears an action tried based upon law with which he will in all probability have nothing to do for the first 12 years of his service. If the latter, the points of law he hears raised and discussed are so technical that from his imperfect knowledge of the law itself, he can derive but little benefit from his attendance. Reverting to what I have said above, I would not be understood to advocate that a Civilian should remain in utter ignorance of civil law up to the time he becomes a Judge. I merely mean that the slight knowledge he might gain by attending the High Court in its original jurisdiction would be almost, if not entirely, forgotten before he would have occasion to apply it, as for the first few years of his actual service in the Mofussil, his time would be so fully taken up in learning his duties as a Magistrate and Collector, that he would not have time to keep up, much less improve, the knowledge he had so acquired, and consequently that the time so spent would be virtually thrown away. I am not prepared to say how far such a scheme might not be found advantageous in Bombay, where a Civilian may be transferred (permanently as I understand) to the judicial department after three years' employment in magisterial and revenue duties; but I do not think that its adoption in Bengal under the present system would be found practically beneficial.

I quite agree with Captain Lees in thinking that any "knowledge "of the languages which is acquired in the Presidency towns may be "quite as well acquired in England, if proper machinery for teaching it "be created." A young Civilian, after passing the required tests in two languages in Calcutta, joins his station in the Mofussil, and for the first month or two after joining, is almost as helpless as if he had never heard of the language in which he has just passed an examination in Calcutta. Mr. Harington has, in his letter of the 20th May 1862, so fully noticed the defects of the Presidency examination, that any further allusion to them by me is unnecessary. I would merely add, that if the necessity of acquiring a conversational knowledge of the languages is ignored in the Presidency examinations, as is or was the case, the knowledge now acquired in India might be as well attained in England, and, according to Captain Lees, at much less expense to the Government. Under these circumstances, I quite agree with Captain Lees in thinking that Civil Servants should be educated in both law and languages in England, and should not be admitted until they have acquired such a knowledge in both as would entitle them, immediately on their arrival in India, to be reported qualified for the public service.

On their arrival in India they might have the option given to them of reading for Honors or of joining at once some station in the Mofussil. Those among them who chose the former might, I think, with great advantage be allowed to attend the Legislative Council Office, and the Home, Foreign, and Financial Offices, but their attendance should be voluntary, not compulsory, for it would clearly not be fair to force them to devote against their will any portion of their time to an object other than that for the attainment of which they had remained in Calcutta.

With regard to those who elected to proceed to the Mofussil immediately on their arrival in India, if any further special legal training was found either necessary or desirable, some such scheme as that proposed by Mr. Harington might be adopted; but on the whole, I am inclined to think that the best practical and most useful training they could have would be that which they would get as Assistants to Magistrates and Collectors of Districts.

There remains but one point on which I desire to say a few words, *viz.*, how best to encourage the reading for Honors; and I confess this seems to me to be a most difficult question.

At present all promotion is, as I think, most fairly and properly regulated by the date on which a Civilian passes the two examinations which every Assistant has to undergo before being invested with the powers of a subordinate Magistrate of the 1st class, or with the full powers of a Magistrate. This being the case, the rapidly passing these examinations is a matter of considerable importance, and with the large number of young Civilians, all of about the same standing now in the country, a failure at any one of them is sure to involve a loss of promotion, and a consequent falling behind his compeers, which very few young Civilians would, I think, be disposed to risk by remaining behind

to study for Honors in Calcutta, while their contemporaries were, by practical Mofussil experience, rapidly gaining an insight into those subjects in which these examinations are held. That this will be the case, I feel sure in my own mind, and I see no remedy for it, except that proposed by Mr. Hobhouse, that *all* Civilians should be compelled to remain at least one year in Calcutta. I am, however, opposed to any such scheme. There may be, and probably are, many young Civilians who arrive in this country with a sufficient rudimentary knowledge of the languages in which they have to pass, to enable them to attain the standard prescribed by the Board of Examiners in six months, but who, from physical constitution or peculiarity of ability, may be much more fitted for the active energetic life in the Mofussil than the hard, plodding reading requisite to ensure success in studying for Honors. I grant the many benefits which a young man has within his reach by a residence in Calcutta, but I would not have the disadvantages overlooked. The social advantages are great, the opportunities of making acquaintance with experienced members of his own and the other services and professions, frequent; but there are, on the other hand, expenses which a Civilian on first coming to the country can generally but ill afford, and temptations to extravagance and other evils which most find it hard to resist, which may be fairly taken as a partial (at any rate) set-off against the advantages of a residence in Calcutta. To keep these men for a year in Calcutta, who could pass their examination in the two languages in six months, and who either have not the inclination, or it may be the talent, to read successfully for Honors with a view solely that those who have that inclination or talent might not be injured as regards their after-service, seems to me to be unfair to the men themselves, and injurious to the interests of Government, who would thus be deprived of services for which they have ample employment.

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*Minute by* W. A. HEELEY, ESQ., B. A., C. S., *Officiating Superintendent of Stamps and Stationery,—dated 9th July*, 1863.

I desire to express my concurrence in the general principle underlying this discussion, which is, as I take it, that young Civilians may be usefully employed, according to their several capacities and inclinations, in work of a more important and interesting character than the ordinary routine training for the Public Service. But there are a number of minor considerations and practical difficulties on which I should wish to make a few remarks.

(1). Sir Charles Trevelyan proposes to make employment in the Legislative and other Departments conditional on passing the ordinary tests in two languages within five months (which now gives a prize of Rs. 800). It is also to be conditional on the student's continuing to read the languages *for Honors*. Students so employed will naturally have the preference in the junior Secretariat appointments, and as these, if adequately filled, always lead to still higher appointments, we have the anomaly of a man's whole future career depending entirely on the way

he has spent his first five months in Calcutta, and on his facility in attaining Oriental languages ; this talent not being in any way necessarily connected with great powers of mind or high cultivation. Suppose a man to have devoted himself mainly to legal studies during his last year in England. He may have attained considerable proficiency in them. He may have studied carefully under an experienced conveyancer. He may have been called to the bar. But he is not a quick linguist. His legal studies have not only occupied his time ; they have weakened his faculty for that exercise of pure memory on which, more than on anything, advance in the knowledge of an Oriental language depends. He can remember a *principle*. He cannot remember a *word*. Such a man would be valuable in the service of the State. He would be more especially valuable in the special department with which alone it was at first proposed that students should be associated. Yet such a man is by this scheme rigorously excluded from the superior class of employments, and all but excluded from the prospect of them in future ; while a man of somewhat quicker apprehension, and somewhat more vacant mind, though he may be totally ignorant of the principles of law and government, obtains all these advantages, is placed in the workshop of law among the very arcana of Government, because he has passed in two Oriental languages within five months. This five months' test is an arbitrary one. A younger man has the advantage over an older ; for at three-and-twenty you are much less able to remember words than at nineteen. A dull man has the advantage over an enthusiatic man ; for, on coming into a new country, there are many things that take off the attention of the latter, and a month or two is lost in looking about him before he can settle to study. Surely the *bonus* of eight hundred Rupees is a sufficient prize for this very exceptional virtue of passing in five months. Let these higher privileges be independent of the time of passing, or let the condition be so fixed that absolute idleness only, not mere want of quickness in learning a new language, may debar the student from obtaining them. Twelve months would be a more reasonable period than five.

(2). Then as to the condition of the students studying for Honors. I am not sure that I see the connection of studying for Honors with work in the Legislative Office. They are both good things, but they are things which different men are differently fitted for. If the object be to promote the deeper study of the vernaculars, it could be better done than by withdrawing the students' attention from them. This system is like the old system at Cambridge, where the continued study of Mathematics was made a necessary condition for the attainment of classical Honors. Mr. Maine knows how many brilliant classical scholars have been deprived of their distinctions by this condition. But, it may be said, "it is highly important that the student in the Government offices should "not forget the vernaculars of the country. We therefore wish him to "continue their study together with his other pursuits. We cannot force "him to take Honors ; but if we force him to read for Honors, or to "profess to read for Honors, he will at all events be subject to the "monthly examination, which will ensure what we want." Then why not

simply compel the student to attend the monthly examination; and when he shows signs of negligence, when he is evidently not keeping up the knowledge of the vernaculars previously attained, remove him at once into the Mofussil. Make the privilege contingent, not on reading for hypothetical Honors, but on actual success in retaining his knowledge at passing-pitch. He will then be as fit in six months for Mofussil work as he was at first passing, so far as his knowledge of the language is concerned, while in knowledge of principles, in knowledge of actual governmental work, he will be far in advance.

(3). A difficulty not yet effectually met is, that students remaining in Calcutta either to study for Honors or to pursue legal and governmental studies in the offices of the several departments, are, unless special arrangements are made, thrown back in the race for promotion. Promotion depends on priority in passing the Mofussil "standard" examinations. A student who stays six months in Calcutta to prosecute his studies, falls behind a student who proceeds at once into the Mofussil and commences active work. Mr. Hobhouse proposes a compulsory residence of 12 months in Calcutta for all, that is, that the majority shall be kept back for the favored few. This would surely be hard upon the majority. It is true that Mr. Hobhouse thinks that the mere residence in Calcutta confers advantages, inasmuch, as it introduces a young man into the society of those whose company is beneficial to him. But there is also a *per contra* account. There is as much likelihood of his falling into the hands of those whose society is injurious to him. And if it is made compulsory for him to stay in Calcutta in order to be made the recipient of the attentions of those who are at the head of the Service, it should also be made compulsory upon them to bestow such attentions. But the general feeling of the Board is against unnecessary residence in Calcutta. It is undoubtedly more expensive, the cost of mere living is greater, and the inducements to spend more than the cost of mere living are ten-fold greater. Many young men come out married. Mr. Hobhouse says that they cannot have expected much comfort. But that is surely no reason why they should not have as much comfort as they can have, unless it be an object to discourage such marriages, which we need not assume till it has been explicitly stated. I cannot conceive a worse machinery for giving ten young men their fair chance of promotion than the keeping forty young men, who have passed their tests, four or five months in Calcutta, spending their money and doing nothing in return for it; wasting their time, and rusting their faculties. Sir Charles Trevelyan proposes, if I understand him rightly, that the student who elects to remain in Calcutta, shall, on condition of his subsequently passing the Mofussil standards, date such passing from the day on which he elected to stay in Calcutta; that is, he shall, *after passing the standard*, be in the same position with regard to other men as if he had passed his highest Mofussil standard on the day on which he was declared qualified for the public service. This is surely not equitable. *Incidit in Scyllam*, &c. Because a student electing to read for Honors is thrown back six months compared with those who elected to join the Mofussil service at once, he is

to be put full 18 months (for that is the minimum period within which an Assistant can obtain full powers), before them, to be advanced, not only above his companions, but above men of one or two years' Mofussil service. The middle line is obvious. No student should stay more than six months in Calcutta after his passing in the two languages. He ought to stay six months; for in less time his legislative and other work can hardly bear fruit. Now the "standard" examinations in the Mofussil take place after intervals of six months. By that period, therefore, the time of passing should be ante-dated. If the Honor student pass his standard in October, he should, for purposes of promotion, be counted as having passed in the previous April. This arrangement would satisfy both himself and his competitors.

(4). To sum up—the *form* which the proposed change should, in my opinion, take, is as follows:—"It shall be optional for students, who "have passed the language-tests within 12 months of arrival, to remain "in Calcutta for six months further, and to be employed during that "period in one or other of the offices under the Government of India, "or the Government of Bengal. They will be required to present themselves for examination on the 1st of every month as usual, at the office "of the Board, and to give satisfactory evidence that they are prosecuting "their studies in the vernacular. They may, if they choose, study for "Honors, in which case, attendance at office will not be required oftener "than every other day. Students who remain in Calcutta on these "conditions, or study for Honors either in Calcutta or the Mofussil, for a "period exceeding four months, will rank as having passed their 'standard' "examinations six months before actual passing."

(5). I believe Honor studies may be prosecuted in some Mofussil stations as well as in Calcutta. At Kishnagur, for example, the proximity of the erudite Nuddea Pundits would give a real student advantages which he would vainly look for from the more polished Moonshees of Calcutta. I have never been able to understand why a young Civilian, in the midst of actual work, should not obtain a Degree of Honor, with its material advantages, whenever he presented himself for it, on the sole condition of competency. Many Assistants for the first year or two find time heavy on their hands. If it be objected that the Government service would lose by the withdrawal of attention, I reply, *firstly*, that this is an evil which would correct itself, because, in proportion as an officer neglected the service of Government, Government would neglect him; and *secondly*, that the object of inducements to study for Honors is not fulfilled by the Honor gained, it is only fulfilled by a life-long interest in vernacular studies, and that, therefore, the co-existence of such studies with Mofussil work, is contemplated by the very nature of the Honor examination.

I have now said all I need say on the special subject. The discussion, as is usual with these discussions, has branched off into many by-paths, but I do not conceive myself justified in giving an opinion, except as to the special point before us. I should have added that I fully support Mr. Maine in his views of the Bombay system of forcing

the students to attend law lectures, a method of instruction never very profitable, and doubly unprofitable in this country. Further, there is only this to be said, that I trust there is no rule of proceeding incompatible with our President's asking the opinion of gentlemen, who, though not Members of the Board, would be able to bring a large and well-used experience to bear from different directions on the subject that is set before us. The collation of opinions would be incomplete, if Sir Barnes Peacock, Mr. George Campbell, and Mr. Seton-Karr (to name no others), were precluded by a mere punctilio from expressing their sentiments on a subject which must have often occupied their attention.

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*Minute by* Moulavi Abdul Lutif Khan Bahadoor, *1st Class Deputy Magistrate and Deputy Collector of the 24-Pergunnahs, and Member of the Bengal Legislative Council,—dated 21st July,* 1863.

It seems to me pretty well agreed, that the Bombay plan of promoting the legal training of young Civilians, by requiring their attendance at the local courts and College law lectures, will not do for Bengal. At the same time, a general impression prevails, that the proposition of the Hon'ble Mr. Maine, to attach a small number of them to the Legislative Office, is deserving of trial. In this opinion I cordially agree. I also think that the plan of affording young Civilians an insight into the working of departmental establishments, is a very good one, and that Mr. Maine's idea, from which the more general one originates, is susceptible of very useful and extended application. But its particular value to me consists in that it might be advantageously turned to the promotion of an object which I have at heart, and which every body admits to be of paramount importance. I mean the encouraging of Civilians to study for Honors. To make myself understood, I must beg the patience of my colleagues.

The maximum time allowed to Civil Servants to pass in two languages, before being drafted into the Service, is 18 months, the average being 8. There is, therefore, ample time left to study for Honors; but, as is notorious, few remain to compete for them, the majority being satisfied with going through the indispensable tests, and commencing business at once in the Mofussil. The consequence is, that there is an absence of Oriental scholarship among the present generation of Civilians which cannot but be deplored, and is deplored by every one who has at heart the good of the country and the relations between the Government and the people. The rewards held out, whether liberal or not, seem to be inoperative; yet something must be done if the serious evil is to be met and honestly combated.

I would, therefore, propose that the actual period of "pupilage" should be peremptorily fixed at a year and half. No Civilian should be allowed to join the Service before that time under any circumstances whatever. Should he go through his two examinations with success in eight months, he has ten before him, which he should be obliged to employ profitably; and what can be better than that it should be devoted

to studying for Honors? I would make this study compulsory, and think it no hardship to those concerned. It should rather be viewed in the light of a privilege, to which none are admissible save those possessed of remarkable ability, as tried and proved by their passing the first two tests in a comparatively short time. On the other hand, it should be considered that the young gentlemen are already under obligations to the country, and the greatest obligation of Government is to send them out to rule and administer, as finished and well trained as possible. As proposed by the Lord Bishop, I would exclude the vernaculars from the Honor tests.

Concurrently with this study should proceed the departmental initiation, such as the Hon'ble Mr. Maine and others of my colleagues have proposed. There should certainly be a selection, and the number of Civil Servants that can at any one time be attached to a department, should also be limited. Thus there is ample provision that those who manifest peculiar talent for acquiring languages by acquiring them in a shorter time than usually allowed, are encouraged to attain further proficiency in them, and opportunities at the same time given for the cultivation of general ability in any of the departments of the State at the Presidency. For the latter, as I have said, there should be selection, but in the first place the inclinations and special aptitude of the gentlemen, as exhibited in the examinations in England, should be consulted. Of course, I mean that while the Civilian is in Calcutta after the pass-examinations, the greater portion of his time should be appropriated to the subjects of the Honor examinations, and his comparatively spare moments given to office work.

It may happen, however, that a young Civilian does not choose to remain in Calcutta all the 18 months. He might in that case be sent to the Mofussil, to be attached to a Commissioner's office, as well suggested by the Hon'ble Mr. Harington. He has there enough to see, and do, and learn, and while treasuring up experience for his subsequent career, he should go on reading for Honors, just the same as if he were in Calcutta. A doubt has been expressed as to the likelihood of obtaining in the Mofussil, persons fit to teach the higher subjects required for Honors. I would respectfully remark that the apprehension is perfectly groundless. There is a mistake in supposing that all the learning, especially the learning which obtains respect and currency among the Native population, whether Mahomedan or Hindoo, is concentrated in Calcutta. Good Arabic, Persian, and Sanscrit Scholars can be had in any part of India, and will be forthcoming the moment a salary is held out. There is no difficulty whatever in obtaining Moonshees for Regimental officers, who are constantly on the move, and Englishmen better acquainted with the Oriental languages cannot be found than among the officers of Her Majesty's Bengal Army; in proof I have to point to the office of Secretary to the Board of Examiners at the Presidency, which has always been filled by Military gentlemen, and is now so well and worthily filled by our learned Secretary. It gives me the most sanguine expectation that my views, in regard to the obligatory study of Oriental languages for Honors, will not go unheeded, when I find so able an

authority as Captain Lees saying that:—"If it is necessary that young Civilians should read for Honors, *all* of them should be compelled to do so." I also find that the views of the Lord Bishop are precisely those I have expressed above. There will be no difficulty about the monthly examinations in the Mofussil, if sealed packets of papers are regularly sent up. and the examinations conducted in the presence of the Commissioners.

As regards promotion, there will be no hardships inflicted in any possible case that is likely to arise. No Civilian will be allowed, by the proposed system, to count service before 18 months of his arrival in India. So that whether he has obtained Honors or not, he cannot complain of any one being before him. At the end of 18 months, the Honor-man stands in the same footing as his contemporary, who has simply got through his pass tests. But the former has qualified himself for high employment, by pushing on his acquisitions in the Oriental tongues, and has, moreover, obtained experience of actual official life, either in a Department in Calcutta, or a Commissioner's office in the Mofussil: these are no slight gains, and will tell in his favor, when Government looks about for talent and merit among its servants.

I should add that the number of Civilians allowed to join each Commissioner's office should be limited, and though the option should be given as to which division a Civilian might wish to be attached, not more than a certain number should be allowed to each. In the event of the full number being in a Commissioner's office, the young gentleman might have his choice of the next division.

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*Minute by the* Hon'ble Sir Charles E. Trevelyan, k. c. b., *President of the Board of Examiners—dated the 25th July* 1863.

The opinions which have been recorded by the members of the Board of Examiners on the reference from the Government of India, dated the 18th March last, although full of valuable observations and suggestions, branch out into such a variety of considerations, that it would be difficult to make a satisfactory digest of them, and the only way to do justice to them is to submit them *in extenso* to the Government.

The subjects of the reference were, as stated in my opening minute —

1*st.*—The Hon'ble Mr. Maine's proposal to employ one or more of the young Civilians studying in Calcutta in the higher work of the Legislative Office.

2*nd.*—The measures which have been adopted by the Government of Bombay for the training, especially in legal knowledge, of young Covenanted Civilians.

And lastly, I ventured to suggest that, as this stage in a young Civilian's career was the one in which he had the privilege of reading for Honors in the Native languages, that point could not be excluded from consideration.

I remarked that the real difficulty of the case consisted in this, that of late years other examinations had been instituted in the Mofussil of a more practical and professional kind; and as promotion and increase of pay depended upon passing in them, young Civilians could not remain in Calcutta after they had passed in the languages without a serious sacrifice.

This difficulty has proved insuperable. No satisfactory arrangement has been suggested by which it can be got over consistently with the maintenance of the existing system. The only proposal which meets the case is that contained in the last paragraph of the minute of Captain Lees, the able and experienced Secretary to the Board, and to that, after full consideration, I give my adhesion. The training of our young Civilians passes through three successive stages, two of which have been so altered of late years that partial amendments are no longer possible, and there must be a consistent re-cast of the entire system.

The principle which has stood the test of experience best, is that upon which the third stage is based, that is, that every Civil Servant should learn his profession, during the early period of his career, in actual contact with the Natives in the interior, and this has been stereotyped by the professional examinations instituted of late years.

The preliminary examinations in the Native languages conducted at the Presidencies remain what they were in Lord Wellesley's time, except that they have lost their spirit and prestige, because the young men are practically prevented from stuyding for Honors.

But, in the first stage of the process in England, a fundamental change has taken place. The age of eligibility has been raised to 22; and, as the selection of the candidates depends upon the result of a literary and scientific examination, a high average of education is obtained.

Many reasons, upon which it is not necessary to enter here, make it desirable that a return should be made to the Haileybury principle to this extent, that the selected candidates should undergo the special training considered necessary for them *in some kind of social relation with each other.*

The most important of these special subjects are law and languages; and the facilities for acquiring that preliminary knowledge of them, which is wanted for entering upon active professional life, are decidedly greater in England than they are in this country.

There would be other important advantages from conducting the whole of the preliminary training in England. The tendency of the Presidency life of young Civilians is not favorable either to mind or body. The tendency of English University life is highly invigorating to both. The young men are so much older than they used to be, that they have no time to spare, and the long succession of examinations they undergo is disheartening to them. First, there is the selection examination, to prepare for which they have almost always used

great exertion. Then, there is the fixed test examination in special subjects at home. Then there are the language examinations in the Presidency towns; and, lastly there are the two professional examinations in the Mofussil. These last are not so much felt, because the preparation for them consists in the active performance of the professional duties to which they have been carefully adjusted; but it is naturally distasteful to young men, who have worked hard at higher subjects at home, and are eager for active life, to have to re-commence monthly examinations of a purely literary kind at the Presidency towns.

It would, therefore, be a great object to save a stage, and to absorb the Presidency portion of this system in the English portion.

The only satisfactory conclusion at which I can arrive is that, after our young Civilians have been selected by competitive examination, their training should be divided between a special University course in England, which should carry them up to the point at which they would be qualified to enter upon active duty in India, and a strictly professional course, similar to that which is now in use in India; and that the intermediate examinations in languages at the Presidencies should be dropped. The young men would thus go straight from the University to the chief seat of the Government to which they were to be attached, whether it was Calcutta, Madras, Bombay, Allahabad, or Lahore, and would enter at once upon the active duties of their profession. They would learn in England as much law as they could with advantage be taught from text-books and lectures, and in India they would acquire that higher skill which arises from the practical application of such knowledge. In England they would be well grounded in the elements of the vernacular languages. In India they would be immersed in affairs, and would rapidly acquire the idiom of professional and daily life.

What is now proposed would not be inconsistent with either of the objects with which this discussion commenced. After the young men had passed their professional tests, a selected number might be attached, for a limited time, to the Legislative, the Secretariat, and other offices at the seat of Government; but, as a general rule, it is better that they should work out their professional noviciate in the Mofussil, until they rise to the standard of a Deputy Secretariship. Rewards may also be given for superior attainments in the Oriental languages, but we cannot contend with the spirit of the age in which we live, and we must be content if the Oriental languages are cultivated to the full extent necessary for practical purposes, leaving a higher knowledge to the liberal curiosity of studious men.

The great advantage to the Government from what has been proposed will be, that the young men destined to take the chief part in the administration of the country will pass from a healthy state of preparation to a healthy state of action, without any intermediate period of questionable benefit: but there will also be a pecuniary saving which will more than counterbalance the expense of any arrangements that may have to be made at home in concert with the two Universities.

Instead of sixty young men or more maintained at the Presidency cities in a state of pupilage, there will be an equal number in a more advanced stage of qualification doing good service to the State.

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MINUTES BY THE MEMBERS OF THE COUNCIL OF HIS EXCELLENCY THE GOVERNOR GENERAL OF INDIA.

*Minute by the* HON'BLE H. B. HARINGTON, C. S.,—*dated the 28th November*, 1863.

"Training of junior Civil Servants for judicial employment."

Letter from the Chief Secretary to the Government of Fort St. George, No. 905, dated 10th June 1863.

These papers have been with me for some time, and I must apologize for having kept them so long. The subject, though very important, is not very pressing, and I trust that no public inconvenience will arise from the delay on my part in passing on the papers with my remarks.

If the proposition of the Government of Madras had been confined to what has already been done at Bombay, or if nothing more had been required from this Government than its sanction to the appointment of a Law Lecturer on a salary of Rs. 300 per mensem, whose duty it would be to deliver a course of lectures to the junior Civil Servants of the Madras Presidency while studying the Oriental languages, I should not have considered myself called upon to offer any opposition to the proposition; and though doubting whether any great advantage would result from the proposed measure, I should, nevertheless, have so far given it my support that I should at once have consented to the papers going to the Financial Department for further consideration and for the issue of orders in that Department.

But the Government of Madras also proposes to create an entirely new description of office, which, in the nature of its duties, is to be partly judicial and partly ministerial; and as it is estimated that the cost of the office will be nearly a lakh of Rupees per annum, it behoves me carefully to consider the grounds on which this large outlay is proposed to be made, the object in view, and whether any commensurate advantages may be expected to result.

Before proceeding to express an opinion on the larger proposition of the Madras Government, I mean as compared with what is now being done at Bombay for instructing, or extending the knowledge of, the junior Civil Servants of that Presidency in some of the branches of English law, I desire, in reference to the proposed appointment of a Law-Lecturership at Madras with a similar object as respects the junior members of the Madras Civil Service, to call attention to the concluding part of a minute recorded, under date the 13th June last, by my Hon'ble colleague, Mr. Maine, as a Member of the Board of Examiners of the College of Fort William, in which he says, "as regards attendance at law lectures, I may be permitted to express my opinion, founded on considerable practical experience, that unless the lectures are very carefully prepared, and by a very competent lecturer, listening to them is about as idle a waste of time as a young man can be condemned to."

I have no wish to speak disparagingly of the learned members of the English, Irish, and Scotch bars, who fill the office of Law Lecturer in the Colleges of the several Presidency towns, but I think it will be

generally admitted that any course of law lectures given by them must contrast very unfavorably with the lectures which most of our junior Civil Servants have already attended at home; and, assuming such to be the case, it does seem to me that it would be highly inexpedient and unwise to compel these young gentlemen, after attending a complete course of law lectures in England by eminent and accomplished Jurists, like my Hon'ble colleague Mr. Maine, Mr. Austin, and others, to attend a further course of lectures on the same subjects in India, delivered by persons of much lower attainments, and, who, although highly respectable lawyers, and well qualified for the offices which they at present hold, or for the duties which they are now discharging, do not possess the peculiar qualifications which would render the attendance of the junior members of the Civil Service at their lectures really profitable to them.

The question as to the manner in which the members of the Indian Civil Service can best be trained for judicial employment and fitted for the bench is no new question. I have heard the question discussed almost from the time that I entered the Bengal Civil Service, now more than 35 years ago. The great difficulty of the question may be inferred from the fact that, although some of our ablest Civilians and many learned lawyers, and others not in the Service, have carefully considered the subject, and taken a prominent part in the discussions that have taken place, it is generally admitted that the remedies which have been hitherto proposed have been partial only in their character, and that a satisfactory solution of the difficulty remains to be discovered.

Shortly after I entered the Service, the office of Register was abolished. The holders of this office were invested with the powers of a Civil Judge in cases of small amount. It has often been said that by the abolition of the office, the only means that the junior Civil Servants possessed of qualifying themselves for the higher office of Zillah Judge was taken away, and the restoration of the office has repeatedly been recommended as calculated, in some respects, to afford to the members of the Civil Service, before they attain to the appointment of Civil and Sessions Judge, an opportunity of acquiring some amount of legal knowledge and judicial experience, in which, on their first appointment, they are supposed to be, at present, generally, very deficient.

The following remarks contained in a minute recorded, under date the 27th July 1838, by the late Mr. William Wilberforce Bird, when a Member of the Supreme Council, express so exactly my own opinion in respect to the office of Register as formerly constituted, its abolition, and the inexpediency of the re-establishment of the office, that I venture to quote them. Mr. Bird says:—"There are many others who still continue to think that, since the abolition of the office of Register to the Zillah and city courts, no school exists in which a practical knowledge can be acquired by the younger Servants of judicial duties, and that some exclusive and professional training is necessary before they can be properly qualified to preside in courts of justice.

"I do not concur in these opinions. It is true that in the office of Register to which it not unfrequently happened that junior Civil Servants,

just out of College, were appointed without any experience whatever, and almost without the power either of understanding, or making themselves understood, some knowledge of forms and of proceedings was gradually acquired ; but it was attended with great inconvenience arising from the youth, ignorance, and inexperience of the junior Servants employed, and the undue influence of the Native officers of the court, on whom they had to depend in the discharge of their judicial functions for guidance and instruction. By dint of deciding they became at last conversant with decisions, but knowledge so acquired is at the expense of the parties concerned, and to disseminate it by such process is (to quote an observation of Mr. Courtney Smith) 'as if Surgeons were to be instructed in their art by dissecting living men.'

"It was, therefore, I think wise to abolish the office of Register, and to postpone calling upon the junior Servants of Government to preside in courts of civil justice until they became, from maturer age and experience, better qualified for the purpose. A knowledge of judicial forms and proceedings is not the only requisite for a Judge ; he should possess, likewise, an intimate acquaintance with the habits, manners, feelings, and prejudices of the people,—an acquaintance which is not to be picked up within the walls of a Cutcherry, where a Judicial Officer is compelled to sit from morning till night, surrounded by his Amlah, whose interest it is to blind both him and the people as to the real character of each other, and keep them as far apart as possible."

I may mention here that I am not now expressing my views for the first time on the question under consideration.

The late Lord Canning having done me the honor to ask my opinion on the proposition to throw open what is known as the Indian Covenanted Civil Service by the repeal of Section 57, 33 Geo. III., Cap. 52, which, to some extent, has since been done by the passing of the Indian Civil Service Act (24 and 25 Vict., Cap. 54), I submitted a paper to His Lordship from which the following is an extract :—

"Much has been said about the unfitness of men for judicial employment who have had no legal training, and, as remarked by Mr. Howard, the Director of Public Instruction at Bombay, the broad fact of the civil courts in this country (other than those established by Royal Charter) being presided over by Judges without law is easily worked up as an effective rhetorical topic.

"This alleged defect in, or objection to, our system cannot be ignored altogether. It is, no doubt, a weak point in the system, but the objection has little, if any, force except as regards the civil courts ; and even in so far as they are concerned, it is entitled to very much less weight than is supposed by those not amongst the few who, again to quote Mr. Howard's words, know any thing about the working of our courts.

"In the criminal department there is a very fair amount and description of training as Assistant Magistrate, Joint-Magistrate, and

Magistrate, extending over a service of several years before the appointment of Judge of Sessions is obtained, and I very much question whether any great benefit would result from the employment of trained lawyers in our Sessions Courts, in so far as the trial of Natives is concerned.

"As regards the civil courts, I would observe that the amount of legal knowledge required in an Indian Judge, not called upon to administer English civil law with the nice distinctions of the English courts between law and equity, is very much less than what is required in an English as distinguished from an Indian Judge. The Hon'ble Mr. Reeves draws a clear, and, as I think, a very correct distinction between the systems of law administered by English and Indian courts respectively in reference to a proposition made by Mr. Howard, the Director of Public Instruction at Bombay, that students, who, according to his scheme, may be passed for the judicial branch of the Service, should be assigned each to a Judge for the purpose of practical training on a system nearly the same as is described as prevailing in Germany, where such students are designated *Auscultators* (hearers or apprentices to the law). Mr. Reeves says :—'Practice as *Auscultators*, I cannot conceive to be advisable.' Where a system of law full of technicalities and difficulties has to be encountered, and a highly artificial state of society exists, I can easily suppose such practice to be necessary. But that is not the case here. Our law is of the simplest kind. The state of society is wholly inartificial. There are no legal details of any difficulty to overcome.' Mr. Reeves then goes on to show how the mode in which a member of the Indian Covenanted Civil Service, as at present constituted, is employed from the time he is declared qualified to enter upon active duty by a knowledge of the Native languages, affords all the judicial practice that is necessary in this country, while the acquirement of that knowledge of the Native character and the institutions of the country, which is essential to the formation of a good Judge or a good Magistrate, is secured in the fullest possible degree."

Since the foregoing remarks were written, a rule has been introduced in England requiring that candidates for the Indian Civil Service, before they are admitted into the Service, shall pass an examination in the general principles of civil law and jurisprudence, and in the elements of Hindoo and Mahomedan Law; and, in order that the candidates may obtain a practical acquaintance with the mode of conducting legal proceedings at home, that they shall attend some of the English courts of justice, and prepare and submit notes of the cases which they may have heard.

A severe course of study, including attendance at law lectures by competent lecturers, must be necessary to enable the candidates to pass the examination above-mentioned, and I cannot think that the knowledge thus acquired would be supplemented in any considerable or appre-

ciable degree, by attendance at a course of lectures delivered in this country by gentlemen who are certainly inferior to the lecturers whose lectures had previously been attended at home. I give in the margin a list of the books which were read by a young friend of mine in the Bengal Civil Service when preparing for his examination.

Sandar's Institutes of Justinian.
Austin's Jurisprudence.
Lindley's ditto.
Cumin's Manual of Civil Law.
Humphrey's ditto.
Maine's Ancient Law.
Blackstone's Commentaries.
Betham's Traites de Legislation Civile et Penali.
Ditto Principles of the Penal and Civil Codes.
Broom's Legal Maxims.
Ditto Commentaries.
Roscoe's Books.
Best's Evidence.
Norton's ditto.
McNaghten's Hindoo and Mahomedan Law.
Strange's Hindoo Law
Macpherson's Code of Civil Procedure.
Ditto Penal Code with Commentary.

As regards that part of the scheme of the Madras Government which contemplates the appointment of junior Civil Servants as Public Prosecutors in criminal cases, with a view to fit them for the office of Sessions Judge, and, temporarily, on the civil side, as ministerial officers of the District courts, I must say that the experience acquired during the time, (extending over many years) that officers are employed as Assistant Magistrate, Joint-Magistrate, and Magistrate, before they can hope to obtain a seat on the bench as Civil and Sessions Judges, appears to me much better calculated to qualify them for the office of Sessions Judge than employed as Government Prosecutor in the criminal cases tried by the Courts of Sessions in the Mofussil, the great majority of which are very simple.

As regards the civil business on which it is proposed that the junior Civil Servants should be employed, I would observe that they could exercise no judicial functions as the law now stands. They could not decide whether a plaint should be admitted, or rejected, or allowed to be amended. They could not lay down the issues arising for trial. They could not take evidence. They could not assist the Judge in drawing up the grounds of his judgment, or take any part in passing the decree, and they could make no orders of a judicial nature in the execution of the decree. What then, it may be asked, would remain for them to do which is not in its nature almost mechanical? In appealed cases, which constitute the chief part of the work of the Zillah Judges, their opportunities of acquiring useful judicial knowledge, or a knowledge of the really important duties of a Zillah Judge's court, would be even less. I am not prepared to recommend any alteration in the law, the effect of which would be to transfer some of the most important duties of the District Judge to inexperienced young men, in order to give them an opportunity of fitting themselves to hold a higher office at some future period. I cannot think that this would be just or fair to the suitors in the Judges' courts.

The general principles of civil law and jurisprudence, and of the elements of Hindoo and Mahomedan law, having been acquired at home, and the candidate's acquaintance therewith having been tested by a strict examination before admission into the ranks of the Service can be obtained; the art of administering the law, in which, rather than in their knowledge of law, the deficiency of our Indian Judges, particularly on their first appointment, I believe, consists, might, I think, be acquired to some extent, or, at least, so far as the art can be acquired without a practical or actual administration of the law with its accompanying responsibilities, not by attending law lectures given by comparatively inferior lecturers, or by attendance as Assessors or as *Auscultators*, or by service as clerks or ministerial officers in the courts of our Zillah Judges, but by attendance at the High Courts during the sittings of those Courts, particularly in the exercise of their ordinary original civil jurisdiction. Such attendance might be made compulsory in respect of all junior Civil Servants during the time they are studying the Oriental languages at the Presidency towns.

Suitable arrangements for the accommodation of the young men when attending the High Courts should be made, and they should be required, as in England, to make notes of the cases heard by them, and to submit the same for revision to the Judges, or to other competent officers appointed by Government.

This would not only be a very profitable mode of spending some portion of the time now at the disposal of the junior Civil Servants engaged in learning the Native languages, who cannot be expected to pass the whole, or indeed the greater part, of the day in studying languages which have little to interest the student, but it would furnish an agreeable variety to those studies.

As a stimulus to the young men to give their minds to what is going on in the High Courts during their attendance at those Courts, and to make themselves familiar with the procedure observed in the cases tried as well as with the principles of law administered, or applicable to the cases as expounded by the learned Judges trying the cases, they might be allowed to offer themselves for an examination in law and procedure according to certain tests, after passing their examination in the Oriental languages, and, if successful, they might receive a pecuniary reward, or a Degree of Honor, or some other mark of distinction, which would be useful in their after-official life in giving them a claim to an appointment on the bench earlier than if they possessed no such distinctive mark.

I venture to think that what I have suggested above would be, in every way, preferable to that part of the scheme of the Madras Government which I am now considering, and that, practically, it would work better and produce more useful results. It would also have this further advantage, that it would cost the Government nothing, and it would not have the effect of drawing away a certain number of young Civilians from judicial and revenue duties, and reducing them, for a time, to mere clerks, or ministerial officers engaged in the discharge

of duties which, with proper supervision to secure honesty, may be just as well performed by Native clerks on a very small salary, or on a salary very much less than what is proposed to be given to junior Civil Servants while employed on probation under the scheme of the Madras Government.

Professor Lees, L. L. D., the able and learned Secretary of the Board of Examiners at Calcutta, in a minute recorded by him, under date the 15th May last, noticed the fact that, at that date, the student-servants (meaning the junior Civil Servants engaged in studying the Native languages in the three Presidencies) cost the Government at the rate of £30,000 per annum, in return for which no public service was being rendered. It is obvious that the scheme of the Government of Madras, if adopted to its full extent, would add considerably to this charge, not for work done, but for instructing for the performance of duty. This appears to me to be an additional objection to the scheme of the Madras Government.

I know of no other country where the State takes upon itself the expense of educating Public Servants for the work they are to perform, and, even in India, the practice is confined to the Civil Service. Everywhere else men are educated at their own expense for public employment, and so far from considering that we should be justified in extending the exception, now made in favor of the junior members of the Indian Civil Service, by giving somewhat similar benefits to members of that Service at a more advanced period of their career, it seems to me deserving of consideration whether we should not do away altogether with the exception, and place the junior Civil Servants, both here and at home in respect to qualifying themselves for the public service, on the same footing as all other Public Servants.

To recapitulate the nature of the training for judicial employment, which is undergone by the junior Civil Servants who enter the Service under the competitive system.—They are well grounded in England in the general principles of English civil law and jurisprudence, and in the elements of Hindoo and Mahomedan law; they have attended courts of justice at home, civil and criminal, and have thus made themselves acquainted with the procedure followed in those courts, and with the manner in which business is conducted in them. [Further opportunities may be afforded of improving and enlarging this knowledge during the time the junior Civil Servants are studying the Native languages in Calcutta, Madras, or Bombay, according to the Presidency to which they belong, without any additional expense to Government, and without interfering with their study of the Native languages, or delaying their passing the prescribed examinations in those languages, by requiring them to attend the sittings of the High Courts, which are composed partly of practised English barristers, and partly of experienced members of the Indian Civil Service. These Courts exercise both original and appellate, civil and criminal jurisdiction.]

On being declared qualified for the public service by a knowledge of the vernacular languages of the country, or the language in use

in the parts of the country in which they are to be employed, the junior Civilians are appointed to offices which bring them into close intercourse with all classes of the Native community, and afford them the best possible opportunity of perfecting their knowledge of the Native languages, and of making themselves acquainted with the feelings, habits, and prejudices of the people, with the custom of the country, with the nature of the landed tenures, and with revenue matters generally. They continue for many years in the successive appointments of Assistant Magistrate and Collector, Joint-Magistrate and Deputy Collector, and Magistrate and Collector, during which time they exercise large criminal powers which render necessary a careful study of the Indian Penal Code and of the Code of Criminal Procedure ; and, in their revenue capacity, as Assistant Collector, Deputy Collector, and Collector, they are constantly engaged in conducting investigations which in their nature are wholly judicial. Many of these investigations are required to be carried on in accordance with the Code of Civil Procedure, whereby a knowledge of the provisions of that Code is obtained, and they often involve questions of Hindoo and Mahomedan law, particularly as regards the right of succession. Both as revenue officers and criminal Judges they have to take evidence on oath, or on what is equivalent to an oath, in nearly every case that comes before them, and they thus become familiar with the principles of evidence, and are practised in the mode of examining witnesses, in the weighing of evidence, and in balancing probabilities.

With all these advantages or means, which are enjoyed by the junior Civil Servants for qualifying themselves for the various situations in the higher grades of the Indian Civil Service, I do not think it can justly be said that, when after sixteen or twenty years of service, such as that of which I have given a description, the appointment of Civil and Sessions Judge is obtained, the officer appointed ascends the bench "untrained," in the large sense in which the word is generally used in its application to our Indian Judges.

The newly appointed Judge may not have been trained in English law to the extent to which an English lawyer, promoted to the bench, is trained before his promotion ; but such training, as has been observed, however useful, is not so essential to an Indian Judge ; and I venture to submit that, looking to the nature of the duties to be performed, and to the various qualifications necessary to constitute a good Indian Judge, our Indian Judges, previously to their appointment to the bench, possess extraordinary and peculiar advantages for qualifying themselves for the judicial office.

In addition to what has been stated above, the Courts of Small Causes, in the course of being established in all parts of the country, for the duties of which the training already described, which the junior Civil Servants receive during the earlier years of their service, is calculated in an eminent degree to qualify them, will afford a useful sphere in which those members of the Service may commence their judicial career with advantage to themselves, and, I think, to the public also.

The conclusion, then, at which I have arrived, after carefully considering the subject, is that the scheme of the Madras Government does not offer any such advantages as would justify its adoption at the heavy cost of public money which it would entail; but instead of meeting the proposition with a direct negative, it might be sufficient to say in reply to the letter, mentioned at the commencement of this note, that there has not been yet sufficient time to judge of the effects of the rule lately introduced for giving a legal education to the junior Civil Servants before their admission into the Service, and for making them acquainted with the practice of the civil and criminal courts at home; and as other measures relating to the education of the junior Civil Servants, or to the mode in which they can best be prepared for their duties in India, are now under consideration, and a Bill is before the Council of the Governor General for making Laws and Regulations, which, if passed into law, will create a class of judicial appointments, to which it is thought that the junior Civil Servants may be advantageously nominated after they shall have been employed for some time in the offices subordinate to the office of Zillah Magistrate and Collector, the Government of India does not deem it expedient to sanction, at present, any arrangement, such as that recommended by the Government of Madras, which would involve a large expenditure to carry it into effect. This would not prevent the issue of an order by the local Governments requiring the junior Civil Servants, while studying the languages at their respective Presidency towns, to attend the sittings of the High Courts in the manner proposed by me.

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*Minute by the* Hon'ble H. S. Maine,—*dated 2nd December*, 1863.

I concur in Mr. Harington's conclusions, and, substantially, in the grounds assigned for them. If there is any part of his note to which I feel inclined to take exception, it is that in which he palliates (or rather his authorities palliate) the deficiencies of the Zillah Judges. Complaints about persons do not readily find their way upon paper; but, if I am to judge from the course of conversation in India, particularly among gentlemen who are themselves acknowledged to be the best lawyers in the Service, I should be disposed to believe either that we have fallen on an exceptional period in respect of the qualifications of Zillah Judges, or that the executive branch of the Service so takes precedence of the judicial as to absorb much more than its due proportion of the available talent in the country. The last, I suppose, is the true explanation, to judge at least from a fact which came to my own knowledge. A Civil Servant, to whose continuance in executive employment there were apparently some objections, was, about six months since, appointed, by the Bengal Government, to a Judgeship in spite of his energetic protestations of his incompetency and even his avowals of his ignorance of the language in which justice was to be administered.

Nor can I quite agree in the supposed simplicity of Indian law as compared with English. I suspect that this simplicity, where it seemed

to exist, came from a cause which is ceasing to operate, the fact that there were not legal advisers, pleaders, and advocates, to take, on behalf of litigants, the subtle distinctions of which no law admits so readily as a law which, like that of India, is very slightly settled and ascertained. The only department of Indian law, on which legal ingenuity has been much exercised, the law of revenue and tenure in Bengal, appears to me as difficult and intricate as any system of jurisprudence in the world. But we will hope that the growing intricacy and technicality of Indian law will be obviated by the true remedy,—the development of clearly written Statute law, and the introduction of a Code or substantive body of fundamental rules.

From the best attention I have been able to give to the matter, I have come very decidedly to the conclusion that the real key to this educational difficulty, which is very real and very pressing, is to be found, both as regards law and language, not in India, but in England. Make what rules we will, this is not a good country for education, which will always here be costly and inefficient. The presence of official responsibility is necessary to make a man work in such a climate. The only alternative is to keep the student-servants somewhat longer in England, to which detention the chief objection is that it adjourns the period of coming out. But when we have once sacrificed the undoubted advantage of bringing youths to India just when manhood is beginning, *i. e.*, at about 18, I find that the Indian physiological authorities do not think that difference of a year or two in age is of any importance. I would keep, therefore, the students in England a year longer, and would have that year entirely devoted to vernacular languages and law. As soon as they come here, I would at once put them to real work ; and they would then begin the only education which is efficiently carried on in this country,—education in the application of knowledge already gained, and in the oral use of languages already learnt.

I am very far indeed (as I have stated elsewhere) from under-valuing the legal course traversed by students in England during their year of probation. But the defect of that course is that it is somewhat over-brief, and, as might be inferred from the list of books given by Mr. Harington, that it is rather too bookish ; this last is a material fault in a country like England where scarcely any legal literature exists except Manuals for practitioners. I am inclined to suggest that (if the subject is sufficiently within our cognizance for us to take the step) the Secretary of State might be moved to enter into communication with the only body in England which undertakes to give a systematic legal education—the Inns of Court. They have a very competent staff of teachers and lecturers ; and I must here explain that the remark quoted by Mr. Harington from my minute is meant to be strictly limited to inferior lecturers. The best substitute for a good legal educational literature, which, as I have said, does not exist in English, is a skilful lecturer or oral teacher ; and if proper arrangements were made, there would be no difficulty in extending under the superintendence of the Inns of Court that most valuable portion of student-servants' English training which consists in attending courts and taking notes of cases.

This system would involve the Secretary of State in some additional expense, but it is abundantly clear, from Mr. Harington's figures, that the Indian Exchequer would save largely on the whole. It would further involve the sacrifice of a principle to which I believe the Civil Service Commissioners are inclined to adhere, the principle of allowing the young men to prosecute the studies of their year of probation in any part of the country which may be most convenient for them. But bringing the students to London to learn laws and languages well is, at all events, preferable to bringing them to Calcutta, Madras, or Bombay to learn law badly, and language not better than at home.

As respects the Madras proposal, I concur in Mr. Harington's suggested reply. It would be ungracious to refuse the moderate sum asked for a Law Lecturer if that part of the scheme stood by itself; but the other branch I regard as thoroughly objectionable. If a new office is created in the courts for the training of students, one of two things will follow:—If the duties are real and actual, the young men will certainly learn, but it will be at the expense of the suitors; if, on the other hand, the duties are nominal, it is absolutely certain that, in the absence of that stimulus which is absolutely needed for work in this country, the execution of the duties will be as merely colorable as the duties themselves.

I have not paused to call attention to discrepancies between this note and the minute which I submitted to the Board of Examiners. Where such discrepancies exist, they are the result of a more mature consideration of the subject. The plan adverted to in that minute can only be carried out, it will be observed, as respects a small minority of the junior Civilians.

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*Minute by the* Hon'ble Sir Charles Trevelyan, k. c. b.,—*dated 8th December*, 1863.

I so entirely concur in Mr. Harington and Mr. Maine's views that I shall not enter upon the subject at any length.

After a long discussion in the Board of Examiners, I arrived at a clear opinion that the educational training of our young men in law as well as in languages should be completed before they left England. The facilities in England are greater than they are in this country. The moral and physical influences are more favorable; and all experience proves that the young men should enter upon active practical duties as soon as possible after their arrival in India. Mr. Wyllie has feelingly expressed the distaste with which young men, who have already been overdone with examinations, would enter upon a new course of instruction. It would have a decidedly repulsive effect. All the cravings of young men at this age, and under these circumstances, are for active life; and the best possible training which they can have for the practice of the law, as well as for most of the other branches of the Indian public service, is that which was long ago recommended by Sir T. Monro,—I mean the active performance of the duties of the

offices of Assistant to the Collector and Magistrate, and Joint-Magistrate and Deputy Collector, and so forth. This old Anglo-Indian doctrine has fully stood the test, and what is wanted is to work it out more completely.

I heartily agree with Mr. Maine that it is a mistake to create offices for the sake of the instruction of those who are to fill them. It is essential, both to the usefulness of an office and to its influence upon those who fill it, that it should be *effective*, by which I mean that it should be created solely because it is wanted for the necessary transaction of the business of the country.

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*Minute by the* Hon'ble W. Grey, c. s.,—*dated 12th December*, 1863.

On the question immediately discussed by Mr. Harington, I will content myself with saying that I entirely agree in the conclusions he has come to.

With respect to the question incidentally raised in the notes of Mr. Maine and Sir. Charles Trevelyan, namely, whether the education of Civil Servants both in law and in the Oriental languages should not be completed in England—and which so far affects Mr. Harington's plan that such an arrangement would, of course, leave no opportunity for the further legal training here which is contemplated by him—I will offer a few remarks.

No specific proposal on this subject has yet been placed before the Government; but in reply to a reference made to them, some months ago, regarding certain measures which had been proposed for the training of young Civil Servants in legal knowledge, the Board of Examiners in Calcutta submitted a series of minutes by the several Members of the Board which it was thought desirable to forward *in extenso*, as "they branch out (it was said) into such a variety of considerations "that it would be difficult to make a satisfactory digest of them" Among the fifteen minutes thus sent up to Government, is one by Captain Lees, to which reference, I observe, has been made by Mr. Harington in his present note. At the close of his minute Captain Lees expressed the following opinion:—"If the time allowed at home "is not long enough for acquiring a competent knowledge of law, the "proper remedy is to prolong it, and not to send the young men out to "India before they have mastered the principles of the subject, because "it is thought they will learn languages better here. What knowledge "of the languages is acquired in the Presidency towns may be quite as "well acquired in England, if proper machinery for teaching it be created. * * * * My idea, therefore, is that the best means of getting "rid of all these troublesome questions, which have been coming up "periodically for the last half century, is to transfer the education of "the Civil Servants, in *languages* as well as in *law*, to England; and "to admit no man into the Service until, as far as principles go, he has "fitted himself for it."

The view thus advocated by Captain Lees was subsequently adopted by two others of the Members of the Board, namely, Sir Charles Trevelyan and Mr. Peacock.

I do not feel able to concur in the opinion given in this matter by Captain Lees.

I cannot think that such facilities will ever exist in England, as are found in India, for the effective acquisition of the various languages which the Civil Servants sent out to the three Presidencies are required to learn. The knowledge of Bengallee, or Telugoo, or Canarese, which a student will gain by reading with a Professor of languages in London, will be a very different and a less available kind of knowledge than that which a student will acquire by reading with a Native Moonshee in India, surrounded, as he generally will be in the latter case, more or less, by persons speaking the language he is studying. I am satisfied that very great difficulty will be experienced by the young Civil Servant in passing the subsequent Mofussil examinations by the first and second standards in the languages, if all that he has to depend upon, previously to commencing the business of an Assistant Magistrate and Collector, is the knowledge acquired in London, which it is proposed to substitute for that now obtained by reading with a Native Moonshee in Calcutta, Madras, or Bombay. A demand would, doubtless, in time create a supply of teachers in London; but I question whether at present there would be found a sufficient number of persons qualified to instruct in *all* the languages in which instruction is needed. Captain Lees speaks of machinery for teaching, yet to be created.

It is, of course, unnecessary to say that, in dealing with this subject, we have to look to the whole of India and not only to Bengal.

The question which is now raised is, in reality, very little different from the old question that has been so much discussed, namely, whether it is better to retain the young Civil Servants for a time in the Presidency towns, or to send them at once, on their arrival in India, into the Mofussil, there to qualify themselves for the public service under the supervision of the district civil officers. This question was very fully and deliberately considered by Lord Dalhousie, with the assistance of the able and practical men by whom he was surrounded, when the Calcutta Board of Examiners, in its present form, was created. One of the proposals then put forward, was to "forbid any residence in "Calcutta to Civilians on their first arrival, and send them off to the Mo- "fussil, there to study the languages among the people who speak them, "and to prepare for public duties amidst the daily transaction of public "business." On this proposal Lord Dalhousie, after stating at length his reasons against a re-establishment of the old College, which also had been proposed, wrote as follows:—

"Reasons, equally conclusive in my humble judgment, have been given against the immediate removal of a young Civilian on his arrival in India into the Mofussil. These are so well stated by Mr. Secretary Grant in his note, and he, with others whose opinions he quotes, is so

much higher an authority on such a question as this than I can pretend to be, that I think it best to quote his sentiments at large.

"'On the whole, I agree with Mr. Halliday, for the reasons he assigns, in thinking it an advantage, generally, to a young Civilian, on his first arrival, to be some time in Calcutta. I think the advantage much greater than it appears at first sight. In no other place in the world has a young man such opportunities of acquiring what is indispensable for an Indian Public Servant with so little disadvantage in other respects. Here are collected a number of the men of mark in the particular Service in which it should be his object to acquire repute in his turn; many men of mark in the sister Service; English Judges and English lawyers, one of whom at least, a member of the Government, must have an eye beyond Tidd's Practice; a large mercantile community, and the greater part of such men of science as this side of India possesses. At the head, giving tone to all the official men, is a first class English statesman. Here is a good atmosphere for a young fellow to breathe, whilst he is learning his letters for the second time in his life. He has, at his command, a society which has the best of the Services in its elements, but is not a Service Society. I have always believed that I perceived a larger, more liberal, more English tone of mind in the Bengal Service than in the Services of the other Presidencies, and something of this I attribute to the College.*

* "'Since I wrote this I have read Lord William Bentinck's minute of 27th December 1828, and found his great authority strongly on this side of the question.'"

"'On the other hand the evils of Calcutta to a young man are greatly over-rated. To young men and old, Calcutta is a much more expensive place to live in than the Mofussil. When you have said this, you have said all. There is no healthier place in India than Calcutta, and as to the Metropolitan dissipation it consists in half a dozen Balls in the cold weather.

"'Now if the young Civilian is to be here at all, during the very early part of his service, he can't be here at any other time so well as when he is learning the languages, and is unfit for useful work in the Mofussil.'

"In these sentiments (Lord Dalhousie concluded), I am fully disposed to concur; and on the grounds which they lay I am of opinion that an immediate removal of the young Civilians, on their first arrival, from Calcutta to a station in the Mofussil, is unadvisable."

The advantages of a temporary sojourn in Calcutta, before banishment to the comparative solitude of a Mofussil life in India, are not, I see, overlooked by some of the present Members of the Board of Examiners. In the minutes of the Bishop of Calcutta, Mr. Hobhouse, and Mr. Dampier, the point will be found specially insisted on. Sir Charles Trevelyan also incidentally speaks of the *privilege* of remaining in Calcutta.

In one material point, I would say that I am inclined to agree rather with Sir John Grant, as he speaks in the paper quoted by Lord

Dalhousie, than with the Bishop. Sir John Grant does not, apparently, admit the idea of there being any greater temptations in Calcutta than in the Mofussil to the "other evil ways" adverted to by the Bishop. I even believe that the contrary is the case, and that many more unhappy instances might be found of Englishmen who have become the victims of vice and immorality among those whose lot is cast in the Mofussil than among those who enjoy (to use the words of the Bishop) "the 'great advantages of society and vigorous intellectual life" in the Presidency towns. I know of no vice unless it be that of gambling, and this has never struck much root in Calcutta, in which a young Civil Servant will not find it fully as easy to indulge in the Mofussil as in Calcutta, and very frequently, in the former case, with a far more permanently injurious effect upon his character and life.

In every respect, therefore, except in the one point of expense of living, I consider it to be desirable and advantageous that, as a rule, young Civil Servants should pass the first few months of their residence in India at the head-quarters of the Government; and in this view I am prepared to adopt, without reserve, the conclusions which Mr. Harington has come to in regard to the measures that may be fitly taken for adding somewhat to the legal education of Civil Servants after their arrival in this country.

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*Minute by* MAJOR-GENERAL SIR ROBERT NAPIER, K. C. B.,—*dated 8th January*, 1864.

I can add nothing to the exhaustive notes on this important subject. I entirely concur in the views of Messrs. Harington and Grey.

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*Minute by His Excellency* COL. SIR WILLIAM DENISON, *Governor General of India.*

The Government of Madras having had the deficiency of the legal training of its servants in the judicial branch forced upon its notice, has submitted a proposal by which it hopes to remedy this evil.

The accompanying minutes all admit the fact that the Zillah Judges are not so competent to deal with legal matters as they ought to be; they, inferentially, admit also that the training to which the Covenanted Servants of the Government are subjected is not such as is calculated to give them that knowledge of law, and that power of dealing with evidence, which ought to be possessed by an officer exercising judicial functions.

Some change, therefore, is admitted to be necessary; but as to the nature and extent of that change there are great varieties of opinion.

Mr. Maine would give to the young man, who has just passed his examination, an extra dose of law before he embarks for India.

Mr. Harington and Mr. Grey would give him this in the shape of attendance in the High Court after his arrival in Calcutta. Sir C.

Trevelyan would have the candidate learn the vernacular languages as well as law in England, and set him to work as soon as he arrives in India: all, however, repudiate the Madras scheme, with the single exception of that part of it which appears to me its weak point, namely, the establishment of a Law Lecturer.

It would be hopeless to attempt to arrive at any satisfactory conclusion where so many men, qualified to deal with the particular question, are so hopelessly at variance.

I may say, however, that the experience of a long life has proved to me that the best mode of teaching a man a profession is to compel him to practise it. When responsibility is thrust upon a man, and when he is made practically responsible for the mode in which he does his work, he will, in nine cases out of ten, fit himself for his duties, and the tenth man is got rid of.

I object, therefore, to all schemes which would keep a man away from his work, or which would profess to fit him for it by cramming him with theories. The sooner he comes out to the country, in which he proposed to work for the best portion of his life, the better. I do not think that the vernacular languages could be taught in England, or that the theoretical knowledge, acquired during a residence of another year or so in England, could, in any way, be compared in usefulness, that is, in fitting a man for the duties he has to perform, to the same period spent in India in *work*.

But then it must be *work*,—actual employment which *must* be done and which taxes the intellect, and brings into action that which has previously been hidden in the mind as theory; this would not be the case were Mr. Harington's proposal adopted. The mere attendance at the sittings of the High Court, the result of which would probably be the quiet adoption, without thought, of what is heard there, will not stand any comparison, in point of utility, with the active exercise of the power of the mind required to enable a man to do something for himself.

It seems to me that the Madras scheme points, at all events, in this direction, and is so far a better scheme than any of those proposed in lieu of it. I cannot, of course, say that it will do as much as may be required; but it will do something towards the removal of an acknowledged evil.

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*Minute by the Viceroy and Governor General of India,—dated 5th March*, 1864.

I concur in considering that the proposals of the Madras Government in respect to the training of junior Civil Servants for the judicial office cannot be sanctioned; *firstly*, because the measures are not expedient, and *secondly*, because they involve a considerable expenditure without any corresponding advantage.

I would, therefore, inform the Madras Government that the Government of India is unable to sanction these proposals.

While fully admitting that Civil Servants should be specially trained for the office of civil Judge, I still think that Mr. Harington has ably shown that in many essential respects the actual training is especially good, and that (in Mr. Harington's words), "looking to the "nature of the duties to be performed, and to the various qualifications "necessary to constitute a good Indian Judge, our Indian Judges, pre-"viously to their appointment to the bench, possess extraordinary and "peculiar advantages for qualifying themselves for the judicial office."

When I consider the practical duties of a Civil Servant for many years before he can be appointed to be a Judge; the daily converse with the people; the constant use of their vernacular; the intercourse with all classes, whether in the towns, the villages, or the jungles; the insight thus afforded into the manners and customs of the people, their modes of thought, the good and the weak points in their character; the receiving and the balancing of evidence; the adjudication of landed tenures; the decision of disputes of every sort and description, involving more or less of civil right; the dealing with matters relating to law of inheritance and other Native institutions; the trial of criminal cases; the hearing of suits between landlord and tenant; the necessary familiarity with judicial proceedings, I think that Mr. Harington has correctly estimated the advantages enjoyed by a Civil Servant for fitting himself for the bench in India. If, after all this, a Civil Servant is not qualified for the office of Judge, I really do not know what possible training would qualify him.

The only defect in the system has heretofore been that Civil Servants have not been employed in trying *regular civil* suits before being appointed to the office of Judge, though they always have been, and will be, employed in trying cases in which every variety of civil question is involved. The importance of this defect is practically much less than is generally supposed. Still, no doubt, it is a defect. But of late the creation of Courts of Small Causes does afford a remedy for this defect, so far as it has existed at all. A certain, though as yet a limited, number of junior Civil Servants are employed in these courts; and this employment should gradually be extended. It is evident that hereby there will be afforded an experience of the very kind that is needed.

On the whole, therefore, I do *not* regard with dissatisfaction the training received by our civil Judges. On the contrary, I think that in many respects, and those too the most important, the present system of practical training is particularly good. It offers advantages which no other system could offer, and without which no amount of legal training would secure efficiency. If after such a training the officer appointed to be a Judge be a man of fair ability and aptitude, he will be found to be qualified. If he do not prove to be so qualified, the failure must result not from any fault in the system, but from his personal deficiencies. It may be that some of our Judges do turn out to be thus deficient, and as a body they are doubtless not equal to the Judges in England. But in England the Government has a considerable body of men from whom to select the Judges. In India the field of selection is narrow, and Govern-

ment has to choose its Judges from among a limited number of officers.

But in the papers now under consideration, there is a question directly raised as to whether the preliminary training which junior Civil Servants undergo should be completed in England, or should, as at present, be commenced in England and completed at one or other of the Presidency towns in India. To this question I will briefly advert, as it is of some importance.

Sir C. Trevelyan writes:—"After a long discussion with the "Board of Examiners, I arrived at a clear opinion that the educational "training of our young men in law as well as in languages should be com- "pleted before they left England. The facilities in England are greater "than in this country; the moral and physical influences are more "favorable, and all experience proves that the young men should enter "upon active practical duties as soon as possible after their arrival in "India."

Mr. Maine writes:—"I would keep the students in England a "year longer, and would have that year entirely devoted to vernacular "languages and law. As soon as they come here, I would at once put "them to real work."

Mr. Harington writes:—"I know of no other country where the "State takes upon itself the expense of educating public servants for "the work they are to perform, and even in India the practice is confined "to the Civil Service. * * * * It seems to me deserving of considera- "tion whether we should not do away altogether with the exception, "and place the junior Civil Servants both here and at home in respect "to qualifying themselves for the public service on the same footing "as all other public servants."

I have also noted the following passage in a minute by Captain W. N. Lees, L. L. D., Secretary to the Board of Examiners in Calcutta, which minute is among the papers now under consideration.

"What knowledge of languages is now acquired in the Presidency "towns may be quite as well acquired in England, if proper machi- "nery for teaching it be created, and at very much less cost to the "Indian revenues. My idea is * * * to transfer the education of "the Civil Servants in languages as well as in law to England; and to "admit no man into the Service until, as far as principles go, he has "fitted himself for it. I do not see what the Indian Government has "to do with student-servants on salaries of £400 a year, or an annual "charge to the State of £30,000 * * *. It appears to me that this "expenditure is not necessary, and therefore I would sweep it—Board "and all belonging to the system—away."

The above passage is also noticed by Mr. Harington in the following terms:—

"Professor Lees, L. L. D., the able and learned Secretary of the "Board of Examiners in Calcutta, in a minute recorded by him on the "15th May 1863, has noticed the fact that at that date the junior Civil

"Servants engaged in studying the Native languages in the three "Presidencies cost the Government at the rate of £30,000 per annum, "in return for which no public service was being rendered."

There certainly is much in the passages above extracted which commends itself to my judgment. If these conclusions be adopted, it would follow that whatever preliminary preparation in law and languages be deemed necessary, should be completed in England; that the Board of Examiners and the system of examination at the Presidency towns should be abolished, and that junior Civil Servants on arriving in this country should be despatched immediately to their several destinations at the stations in the interior, in the same manner as they are now despatched after passing the prescribed examination in the Presidency town. I am myself prepared to accept these conclusions. I believe that the residence in Calcutta does not afford appreciable advantages to the junior Civil Servants. I certainly apprehend that the advantages are not at all commensurate with the cost which the present system entails on the State. It is well known that junior Civil Servants find, on commencing real work, that their studies in the Presidency town have not qualified them for their duties. I believe that when young officers, after residing for some time in Calcutta, are despatched to their stations, they are nearly as raw as if they had been sent up-country on their first arrival. I have duly considered what has been said on various occasions regarding the advantages arising from the official society with which young officers come in contact while residing in Calcutta. Still I think that the casual society of those not directly concerned in him cannot be so useful to a young officer as the society of the Judge and Magistrate in the Mofussil, who are directly interested in him, and are responsible for his training.

Doubtless young officers, if sent up-country on their first arrival, would not be fit for real work; some little time must elapse before they could be entrusted with actual business. But that is equally the case with the present system.

Further, the reasons which originally existed for supervising the preliminary training of young Civil Servants in this country will become less and less as the competitive system bears fruit. In many respects a state of *quasi* pupilage at a Presidency town is unsuited to the young men who now enter the Civil Service, and who are older in years and experience than the young men of the former generation.

That a change such as that now indicated would produce some financial saving is evident. The large aggregate sum now paid to student-servants would not indeed be immediately saved.

Still the ultimate and indirect economy would be considerable, and the services of these young officers would be sooner brought into play. But the main reason for advocating the change is the benefit of the officers themselves whose time would be turned to better account than at present, and who would receive a better official education in the actual scene of their future labors than they could in Calcutta.

I am therefore of opinion that action should now be taken with a view to effecting a change for the future in this respect; and I propose that this Government should address Her Majesty's Government on the subject. The despatch from this Government should embody all the requisite information, statistical and other, and should give cover to the various valuable minutes which have been recorded.

But while I propose that the Board of Examiners at the Presidency town should be abolished as soon as may be conveniently practicable, and that young Civil Servants should be sent to their destinations and stations on their first arrival in India; yet, on the other hand, I do not advocate their stay in England being protracted. I do not propose that another year should be added to the time of their stay in England. Already it may be a question as to whether they do not come out too old. If their entry into the real duties of their profession be delayed, then they will be advancing in years before they can hope to rise to important situations or to retire from the Service. And this circumstance would be calculated to detract from the popularity of the Service. I should therefore recommend that their stay in England should be limited to the shortest time compatible with their being sufficiently grounded in law and languages.

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*From* E. C. BAYLEY, ESQ., *Secretary to the Government of India, Home Department, to the Secretary to the Government of Fort St. George,—No.* 2002, *dated* 21*st March*, 1864.

I am directed to acknowledge the receipt of your letter No. 905, dated the 10th June 1863, requesting the sanction of the Government of India to a scheme by which the Madras Government desires to provide suitable training, at an annual cost of about one lakh of Rupees, for the junior Civil Servants of that Presidency who may elect for the judicial branch of the public service.

2. In reply, I am desired to intimate that, after a very careful consideration of the subject, the Governor General in Council has come to the conclusion that the proposals of the Madras Government do not offer any such advantages as would justify their adoption at the heavy cost of public money which they would entail. In communicating to you this decision, I am to observe that there has not been yet sufficient time to judge of the effects of the rule lately introduced for giving a legal education to junior Civil Servants before their admission into the Service, and of making them acquainted with the practice of the civil and criminal courts at home; also that there are other measures relating to the education of the junior Civil Servants now under the consideration of the Government of India; and finally, that a Bill is before the Council of the Governor General, which, if passed into law, will create a class of judicial appointments, to which it is thought that junior Civil Servants may be advantageously nominated after they shall have been employed for some time in the offices subordinate to the office of Zillah Magistrate and Collector.

*From the Government of India, Home Department, to the Right Hon'ble the Secretary of State for India,—No. 20, dated 21st March, 1864.*

Your Judicial Despatch to the Government of Bombay, No. 15, dated 25th May 1860, conveyed approval of a proposal made by that Government to provide a course of legal study at Bombay for Civil Servants intended for the judicial branch of the Service. A copy of the correspondence was transmitted to the Government of India under cover of your Despatch No. 45 of the same date; and you will find the opinions on the subject which we then obtained from the other local Governments in India, recorded as entries Nos. 59 to 75 in our Judicial Proceedings of the 31st January 1863.

2. Recently our attention has been again drawn to this topic. In the first place the Government of Bombay* requested and obtained our sanction to the expenditure required for the carrying out of the scheme which that Government, acting upon the approval granted by you three years previously, had determined to adopt for the purpose in view. The scheme, as you will perceive, consists in requiring all young Civil Servants, on their arrival at Bombay, to attend a course of lectures at the Presidency law school, and to make reports on cases heard by them at the Small Cause and High Courts. Secondly, our Hon'ble colleague Mr. Maine, in a minute dated March 2nd, 1863, proposed that one or more of the junior Civil Servants on the Bengal establishment, who might be studying the Native languages in Calcutta, should be employed from time to time for some hours in each day in the higher work of the Legislative Office. And, lastly, the Madras Government requested† our sanction to an arrangement, estimated to cost about one lakh of Rupees annually, the principal features of which were the compulsory attendance of all young Civilians, intended for the judicial branch of the Service, at a course of lectures to be delivered by a Law Professor at the Presidency, and the creation of ten new appointments, under the designation of Registrar to, and Public Prosecutor in, the Judge's Zillah Court, as necessary stepping-stones to the higher office of Civil and Sessions Judge.

* From Bombay, No. 171, dated 9th February 1863. Resolution dated 18th March 1863. Financial extract, dated 28th March 1863.

† From Madras, No. 905, dated 10th June 1863.

3. Considering that Mr. Maine's proposal had an important bearing upon the examinations which young Civil Servants have to undergo, we determined to refer it for the opinion of the Board of Examiners at Calcutta‡ and, with the papers which we in this view caused to be forwarded to the Board, we also transmitted a copy of the correspondence on the scheme of legal education adopted at Bombay, and an extract from a minute bearing on the position of junior Civil Servants studying the Native languages in Calcutta, which on a previous occasion had been written by our Hon'ble colleague Mr. Harington. We desired the Board to favor us with their opinion in detail on the various matters discussed in all these papers.

‡ To Board of Examiners, No. 1739 dated 18th March 1863.

4. Our reference was still under the consideration of the Board of Examiners when the proposal from the Madras Government, above mentioned, was received. The reply* obtained from the Board on the 30th July last gave cover to the minutes of the Members, and requested our particular attention to a suggestion emanating from the Secretary to the Board, and adopted by the President, to the effect that the education of Civil Servants in languages as well as in law should be transferred to England, and that the young men should pass direct from their course of training in England to the active duties of their profession in the Mofussil, the professional tests known as the departmental examinations being still retained, but the preliminary stage of pupilage at the Presidency towns being abolished.

* From Board of Examiners, No. 370, dated 30th July 1863.

5. The valuable minutes received from the Board of Examiners have been considered by us in connection with the projects submitted by the Madras Government. The latter we have been unable to sanction, and we have informed† the Madras Government accordingly. The measures proposed would have involved considerable expenditure, and were besides regarded by us as in themselves clearly inexpedient.

† To Madras, No. 2002, dated 21st March 1864.

6. We have had more hesitation in coming to a conclusion upon the question raised by the Board of Examiners. It differs little from a question that has been on former occasions much discussed, *viz.*, whether it is better to retain the young Civil Servants for a time in the Presidency towns, or to send them at once, on their arrival in India, into the Mofussil, there to qualify themselves for the public service under the supervision of the District civil officers. In this form the question was very fully and deliberately considered by Lord Dalhousie's Government, when the Calcutta Board of Examiners was instituted. It was then decided that the advantages arising from the society with which young officers came in contact in Calcutta, before entering upon the comparative solitude of a Mofussil life in India, were more than it would be expedient to forego.

7. We give due weight to the representations on which this decision was founded. But we think that the casual society of those not directly concerned in him cannot be so useful to a young officer as the society of the Judge and Magistrate and other civil officers in the Mofussil, who are directly interested in him, and are responsible for his training. Also it must be remembered that the system under which candidates are now selected for the Indian Civil Service has altered in some degree the circumstances with which Lord Dalhousie had to deal. Not only are the young men who now come out to India older in years and experience than the young men of the former generation, and for this reason less amenable to a state of *quasi* pupilage, but many of them want either the opportunity or the inclination to avail themselves of those advantages of social life at a Presidency town which seemed so valuable to Lord Dalhousie.

8. Believing, then, that residence in Calcutta does not afford appreciable advantages to junior Civil Servants, we certainly apprehend

that the advantages are not commensurate with the cost which the present system entails on the State. Doubtless young officers, if sent up the country on their first arrival, would not be fit for real work. But that is equally the case under the present system. It is well known that junior Civil Servants find, on commencing such work, that their studies in the Presidency towns have not qualified them for their duties. On the other hand, the change proposed would evidently give a large financial saving. The whole amount now paid to student-servants (£30,000 per annum) would not indeed be immediately saved, but the ultimate and indirect economy would be considerable, and the services of these young officers would be sooner brought into play.

9. Still the main reason for advocating the change is the benefit of the officers themselves, who would receive a better official education in the actual scene of their future labors than they do in Calcutta.

10. On the whole, therefore, we are of opinion that the suggestion which has come to us through the Board of Examiners should be acted upon; and we accordingly submit for your consideration our wish that the Board of Examiners at Calcutta should be abolished as soon as may be conveniently practicable, and that young Civil Servants should be sent to their destinations and stations immediately on their first arrival in India.

11. At the same time we do not wish to delay the stay of young Civilians in England more than is absolutely necessary to the attainment of the requisite degree of proficiency in law and in the Eastern languages. The objection urged with most force against the present system of selection is that the men come out at too late an age, and we are desirous that the time at which they arrive in India should not be further deferred save so far as is positively necessitated by the changes now proposed.

12. We desire, in conclusion, to draw attention to the minutes of the Governor-General and the other Members of Government. These minutes show the different views taken by individual Members of Government on some of the points involved in this Despatch.

*List of Enclosures.*

1.—Letter from Government of Bombay, No. 171, dated 9th February 1863, and enclosure.
2.—Resolution to Financial Department and to Government of Bombay, Nos. 1740 and 1741, dated 18th March 1863.
3.—Extract, Financial Department, No. 1239, dated 28th March 1863.
4.—Minute by the Hon'ble Mr. Maine, dated 2nd March 1863.
5.—Ditto by the Hon'ble Sir Robert Napier, dated 3rd March 1863.
6.—Ditto by the Hon'ble Sir Charles Trevelyan, dated 3rd March 1863.
7.—Ditto by the Hon'ble Mr. Maine, dated 4th March 1863.
8.—Ditto by the Hon'ble Sir Charles Trevelyan, dated 5th March 1863.
9.—Ditto by the Hon'ble Mr. Harington, dated 5th March 1863.
10.—Extract from a Minute by the Hon'ble Mr. Harington, dated 20th May 1862.
11.—Letter to Board of Examiners, No. 1739, dated 18th March 1863.

12.—Letter from Government of Madras, No. 905, dated 10th June 1863, and enclosure.
13.—Ditto from Board of Examiners, No. 370, dated 30th July 1863, and enclosure.
14.—Minute by the Hon'ble Mr. Harington, dated 28th November 1863.
15.—Ditto by the Hon'ble Mr. Maine, dated 2nd December 1863.
16.—Ditto by the Hon'ble Sir Charles Trevelyan, dated 8th December 1863.
17.—Ditto by the Hon'ble Mr. Grey, dated 12th December 1863.
18.—Ditto by the Hon'ble Sir Robert Napier, dated 8th January 1864.
19.—Ditto by the late Governor General, Colonel Sir William Denison.
20.—Ditto by the Governor General, dated 5th March 1864.
21.—Letter to Government of Madras, No. 2002, dated 21st March 1864.

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*From the* RIGHT HON'BLE SIR CHARLES WOOD, BART., G. C. B., *Secretary of State for India to His Excellency the Right Hon'ble the Governor General of India in Council,—No.* 4, *dated* 16*th January*, 1865.

On receipt of your letter in the Judicial Department, dated 21st March (No. 20) 1864, I forwarded the same with the accompanying minutes and correspondence to Her Majesty's Civil Service Commissioners, with a request that they would favor me with their opinion as to the mode in which provision might be most effectually made for the training of the selected candidates for the Indian Civil Service in law and in the Native languages, should it be eventually determined, in accordance with the recommendations of your Government, that the preliminary training of the young Civilians for their duties in India should be completed before they leave this country.

2. You will observe from the correspondence which resulted from this communication, and of which I forward a copy for your information, that I have decided in Council on the adoption of the change above referred to, and that the selected candidates will hereafter be required, except in special cases, to pass a period of two years under training in this country previously to their presenting themselves for final examination with a view to admission into the Service.

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|---|---|---|
| Letter to Civil Service Commissioners, | | 20th June 1864. |
| „ from | ditto | 3rd August, with enclosures. |
| „ to | ditto | 29th November. |
| „ from | ditto | 10th December, with enclosure. |
| „ to | ditto | 20th December. |
| „ from | ditto | 23rd December, with enclosure. |

3. The candidates selected at the competitive examination of 1865 will not be available for appointment to the Service till 1867, but as they will be prepared to enter at once on the discharge of public duties, it is hoped that no inconvenience will arise from the introduction of the new system. I have intimated that 40 candidates will be selected at the next examination in June, which will afford 20 for Bengal (the number asked for in your letter No. 70 of 1864); but if, under the circumstances, you desire to have more than 20, you will immediately apprise me.

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*From the* Right Hon'ble Sir Stafford H. Northcote, Bart., M. P., *Secretary of State for India, to His Excellency the Right Hon'ble the Governor General of India in Council,—No.* 11, *dated* 16*th January*, 1868.

With reference to my Despatch* of this day's date, on proposed changes in the administration of Bengal, I wish to call your attention to a subject closely allied to the above, but so far distinct as to be better dealt with separately.

* No. 10

2. It is the opinion of some that the present civil administration of India is defective in this respect, that no sufficient distinction is maintained between the classes of officers called on to fulfil functions so widely different as those of the ordinary administrative branches and of the judicial. It has been suggested that such an alteration might be made in the system of promotion which now obtains among Civilians, as would obviate the common occurrence of a transfer to the judicial bench of men who have had no special preparation for the performance of its duties, and are too old to commence the necessary training.

3. I shall be glad to have your opinion on this subject; and any proposals which you may make to obviate evils, which I find to be the subject of general complaint, will meet with my ready concurrence.

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*From* E. C. Bayley, Esq., *Secretary to the Government of India, Home Department, to the Secretary to the Government of Bombay,—No.* 1733, *dated the* 9*th April*, 1868.

I am directed to forward the accompanying extract* from a Despatch from the Secretary of State, No. 11, dated the 16th January last, and to request that the Government of Bombay will favor the Government of India with an expression of opinion whether it is expedient that a distinct judicial branch of the Civil Service should be formed, the members of which should be trained specially for the bench, and should not look for advancement beyond the sphere of their proper duties; and also whether there are any difficulties in accepting the principle of such a change absolutely with regard to the Indian Civil Service.

* Paragraphs 2 and 3.

2. The Governor General in Council would be further helped to a judgment on this important question by the opinion of a select number of officers of experience and distinction serving under the Bombay Government, including some of the members of the Civil Service and of the legal profession who are on the bench of the High Court.

3. From the correspondence marginally noted, it would appear that the system of at least partially separating judicial and administrative functions has been for some time partially in force in the Bombay Presidency, that is to say, that young Civil Servants are assigned to the judicial branch at an early period of their career. It is requested that a full history of this experiment may be submitted, showing how it is

From the Government of Bombay, No. 76, dated 26th November 1859.
To ditto, No. 1405, dated 7th July 1860.
From ditto, No. 44, dated 01th June 1861.
From ditto, No. 171, dated 9th February 1863.

found to work; and how far, the separation having once been made, the judicial officers are available, or can put in their claim thereafter, for employment in other branches of the Service.

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*From* E. C. BAYLEY, ESQ., *Secretary to the Government of India, Home Department, to the Chief Secretary to the Government of Fort St. George,—No.* 1734, *dated 9th April,* 1868.

I am directed to forward the accompanying extract* from a Despatch from the Secretary of State, No. 11, dated the 16th January last, and to request that the Government of Madras will favor the Government of India with an expression of opinion whether it is expedient that a distinct judicial branch of the Civil Service should be formed, the members of which should be trained specially for the bench, and should not look for advancement beyond the sphere of their proper duties; and also whether there are any difficulties in accepting the principle of such a change absolutely with regard to the Indian Civil Service.

* Paragraphs 2 and 3.

2. The Governor General in Council would be further helped to a judgment on this important question by the opinion of a select number of officers of experience and distinction serving under the Madras Government, including some of the members of the Civil Service and of the legal profession who are on the bench of the High Court.

3. From the correspondence marginally noted, it would appear that, in the Madras Presidency, the separation of the Civil Service into two branches, judicial and administrative, has been practically attempted. It is requested that a full history of this experiment may be submitted, showing how it is found to work; and how far, the separation having once been made, the judicial officers are available, or can put in their claim thereafter, for employment in other branches of the Service.

To the Government of Madras, No. 403, dated 25th February 1860.
From ditto, No. 20, dated 5th January 1861.
From ditto, No. 905, dated 10th June 1863.
To ditto, No. 2002, dated 21st March 1864.

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*From* E. C. BAYLEY, ESQ., *Secretary to the Government of India, Home Department, to the Secretary to the Government of Bengal,—No.* 1735, *dated 9th April,* 1868.

With reference to the correspondence marginally noted, I am directed to forward the accompanying extract (paragraphs 2 and 3) from a Despatch from the Secretary of State, No. 11, dated the 16th January last, and to request that the Government of Bengal will favor the Governor General in Council with an expression of opinion on the

From the Government of Bengal, No. 1956, dated 24th March 1859.
To ditto, No. 863, dated 28th April 1859.
To ditto, No. 2359, dated 26th November 1859.
To ditto, No. 427, dated 25th February 1860.
To ditto, No. 1254, dated 7th July 1860.
From ditto, No. 3439, dated 28th June 1860.
From ditto, No. 448, dated 17th August 1860.
From ditto, No. 664, dated 13th November 1860.

following points :—(1), whether it is expedient that a distinct judicial branch of the Civil Service should be formed, the members of which should be trained specially for the duties of the bench, and should not look for advancement beyond the sphere of those duties; and (2), whether there are any difficulties in accepting the principle of such a change absolutely with regard to the Indian Civil Service.

2. The Governor General in Council would be further helped to a judgment on this important question by the opinion of a select number of officers of experience and distinction serving under the Government of Bengal.

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*From* E. C. BAYLEY, ESQ., *Secretary to the Government of India, Home Department, to the Secretary to the Government of the North Western Provinces,—No.* 1736, *dated 9th April*, 1868.

With reference to the correspondence marginally noted, I am directed to forward the accompanying extract (paragraphs 2 and 3) from a Despatch from the Secretary of State, No. 11, dated the 16th January last, and to request that the Government of the North-Western Provinces will favor the Governor General in Council with an expression of opinion on the following points :—(1), whether it is expedient that a distinct judicial branch of the Civil Service *should* be formed, the members of which should be trained specially for the duties of the bench, and should not look for advancement beyond the sphere of those duties ; and (2), whether there are any difficulties in accepting the principle of such a change absolutely with regard to the Indian Civil Service.

To the Government, North-Western Provinces, No. 404, dated 25th February 1860.
To ditto, No. 1403, dated 7th July 1860.
From ditto, No. 899 A, dated 8th August 1860.

2. The Governor General in Council would be further helped to a judgment on this important question by the opinion of a select number of officers of experience and distinction serving under the Government of the North-Western Provinces, including one or more of the Judges of the High Court.

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*From* E. C. BAYLEY, ESQ., *Secretary to the Government of India, Home Department, to the Secretary to the Government of the Punjab,—No.* 1737, *dated 9th April*, 1868.

With reference to the correspondence marginally noted, I am directed to forward the accompanying extract (paragraphs 2 and 3) from a Despatch from the Secretary of State, No. 11, dated the 16th January last, and to request that the Government of the Punjab will favor the Governor General in Council with an expression of opinion on the following points :—(1), whether it is expedient that a distinct judicial branch of the Civil Service should be formed,

To the Government of the Punjab, No. 405, dated 25th February 1860.
To ditto, No. 1404, dated 7th July 1860.
From ditto, No. 2081, dated 13th August 1860.

the members of which should be trained specially for the duties of the bench, and should not look for advancement beyond the sphere of those duties; and (2), whether there are any difficulties in accepting the principle of such a change absolutely with regard to the Indian Civil Service.

2. The Governor General in Council would be further helped to a judgment on this important question by the opinion of a select number of officers of experience and distinction serving under the Government of the Punjab, including one or more of the Judges of the Chief Court.

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*From* E. C. BAYLEY, ESQ., *Secretary to the Government of India, Home Department, to the Registrar of the High Court of Judicature at Fort William in Bengal,—No.* 1738, *dated the 9th April*, 1868.

I am directed to forward the accompanying extract (paragraphs 2 and 3), from a Despatch from the Secretary of State, No. 11, dated the 16th January last, and to request that the Judges of the High Court will favor the Government of India with an expression of opinion whether it is expedient that a distinct judicial branch of the Indian Civil Service should be formed, the members of which should be trained specially for the bench, and should not look for advancement beyond the sphere of their proper duties; and if so, how they would propose to meet the difficulties which have from time to time been suggested against the adoption of such a course.

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*From the Government of India, Home Department, to the Right Hon'ble the Secretary of State for India,—No.* 54, *dated 4th April*, 1868.

We have received your Despatch No. 11, dated the 16th January last, requesting our opinion on a suggestion made to you that such an alteration might be effected in the present system of promotion in the Indian Civil Service as might obviate the transfer from administrative duties to the judicial bench of men who have had no special training for the duties of a Judge.

2. As many questions of difficulty and importance are involved in this subject, we have thought it advisable, in the first instance, to consult the several local Governments, especially the Governments of Bombay and Madras, as in those Presidencies the system of maintaining a separate judicial branch of the Civil Service has been partially in force for some time past.

3. We shall reply to your Despatch fully as soon as we shall have received the answer of the various local Governments.

*From the* Right Hon'ble Sir Stafford H. Northcote, Bart., M. P., *Secretary of State for India, to His Excellency the Right Hon'ble the Governor General of India in Council,—No.* 96, *dated* 21*st May* 1868.

I have to acknowledge the receipt of the Despatch of your Excellency in Council, dated 4th April, No. 54 of 1868, on the subject of altering the present system of promotion in the judicial department of the Civil Service, and to state that I shall await with interest the further communication promised by your Excellency in Council on this important subject.

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*Minute by* G. Campbell, Esq., *Chief Commissioner of the Central Provinces,—dated Nagpore,* 20*th February* 1868.

The Judicial Commissioner lately recommended the separation of executive and judicial functions throughout the Central Provinces. This would involve a radical change in the system of administration. But in the course of my tour it has seemed to me that the judicial work is divided to a most unnecessary and inconvenient degree, the usual practice being apparently that almost every officer of every degree has a little of every thing. And, I think, that without disturbing our system, much may be done to approximate, so far as is really found desirable, to a division of duties. Because each officer has power in all Departments, it by no means follows that he is to exercise them in all; the law passed regarding the courts of the Central Provinces gives the District officers ample power to distribute the judicial business in the manner most advisable. The following instructions will therefore be issued, and are to be strictly adhered to.

At the Head Quarters of Districts no more than one officer (including the Tehseeldar) is to be entrusted with the civil court business up to the limit of his powers, unless the business is so heavy that an officer exclusively employed, cannot dispose of it, such cases (if there be any) being immediately reported. No officer should be put in charge of the station civil court, whose powers do not extend to suits of Rs. 300, and wherever it is possible they should be extended to a higher limit. Tehseeldars in these Provinces are as much judicial as executive officers, and in case the Tehseeldar is considered to be, on the whole, the fittest person, he may be given up to judicial duties, and put in charge of the station court; but in that case the Tehseel is to be placed in charge of an Assistant, or Extra-Assistant.

Similarly, at out-stations where both an Assistant and a Tehseeldar are stationed, one officer is to have exclusive charge of the station civil court, and the other is not to be employed on such duties, except in regard to cases beyond the power of the officer in charge of the civil court. One of the two officers should be given up to judicial functions, and relieved of executive duty, except so far as is compatible with a full measure of judicial business. He should have the civil court and as many revenue or criminal cases as will suffice to occupy his time; the other officer taking the executive work, and as many criminal or

revenue cases as will suffice to give him full occupation. In all cases the Deputy Commissioners will define the duties of each officer exactly and precisely. At Gadurwarra, Hurdah, Boorhanpore, and Hingunghat, the Assistants in charge are to take the judicial duty, unless any other arrangement is reported, and receives the previous sanction of the Chief Commissioner. They may of course look after local works and such like business out of office hours.

It should be understood that judicial powers are given to officers in the inferior position of Naib Tehseeldar merely to satisfy the public convenience in cases in which a single officer combining executive and judicial functions is necessarily often absent from his Head Quarters. Naib Tehseeldars will therefore exercise no judicial powers at stations where there is more than one superior officer. They will only assist Tehseeldars at stations where those officers are alone. I would only make a possible exception in the case of Boorhanpore, if it should prove that the civil business is really greater than one officer can perform. In that case he may be assisted by the Naib Tehseeldar; but if it be so, the fact of the excessive work must be shown by figures, disputed cases decided on trial after actual conflict of parties being distinguished from other cases.

Deputy Commissioners will carry out the above arrangements as speedily as possible under the instructions of the Commissioners of Division, who are requested to report the arrangements made through the Judicial Commissioner. The Judicial Commissioner will be requested, in forwarding these reports, to be so good as to inform me whether he thinks the arrangements suitable and the officers qualified in each case.

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*Extract of a letter from the Secretary to the Chief Commissioner of the Central Provinces, to the Judicial Commissioner, C. P.,—No.* $\frac{1071}{103}$, *dated Nagpore, the 7th April* 1868.

25. The Chief Commissioner fully acknowledges (para. 125) that by your care the procedure has been rendered quite as good as could be expected under the circumstances of our courts. The subject is one attended with many difficulties and considerable doubts. On the one hand, the rough untutored justice of early regulation-days is hardly compatible with any very regular procedure; and on the other, the too complete separation of the judicial system, and the attempt to work it under very strict rules, have in some Provinces led to a too machine-like working, which may succeed in a country very far advanced and favourably situated, but has hardly attained great success in India, such as to be acknowledged by general agreement. In these Provinces we are in a sort of transition state, and Mr. Campbell is hardly prepared to advocate an immediate advance to a too independent and regular judicial system. He is impressed with the belief that the judicial department must not in this country too much over-ride the executive. While, there-

fore, he fully admits that it is impossible to reconcile the present distribution of duties with a complete and regular procedure; he would not advocate total separation, and would rather try the effect of [illegible] separation of duties of which our system admits, as more [illegible] in his recent minute of the 20th February 1868.

26. The Chief Commissioner's object would be, that [illegible] which most depend on common sense, and an efficient use [illegible] and the simpler portions of the criminal law, should, as [illegible] combined with executive functions; while the more regular civil business and other work for which exactness of procedure in courts sitting in permanence is more required, may be entrusted to selected officers set apart for the purpose. Mr. Campbell trusts that this, which he may call an intermediate system, will have a fair trial.

27. The Chief Commissioner also quite agrees with you (para. 127) that the police should not be kept too much apart as a separate department. Its functions are really in a great measure judicial, and a man cannot be an efficient head of a District who does not well understand the working of the police as well as of the courts. Mr. Campbell has done what he could in the direction suggested by you by appointing civil officers to one or two police charges, and police officers to civil charges; and his personal hope is, that more will be done in that direction, and the police rendered entirely a department of the magistracy.

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